
(2007) 05 SHI CK 0010
In the High Court Of Himachal Pradesh

New India Assurance Co. Ltd.

APPELLANT

Vs

Prem Chand and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2008) ACJ 679 : (2007) 3 ShimLC 282

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By means of this writ petition, the insurance company has challenged the award passed by learned Motor Accidents Claims Tribunal (II), Una, delivered in M.A.C. Petition No. 133 of 2001; decided on 28.1.2005 on the ground that the award is perverse and liable to be set aside.

2. A preliminary objection has been raised that in view of the judgment of the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, , the present writ petition is not maintainable. Reliance has been placed on the following observations of the Apex Court:

(6) The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149 (2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149 (2) of the Act. [See *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain

a petition under Article 227 of the Constitution. Even where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision u/s 115 of Civil Procedure Code, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court u/s 115, Civil Procedure Code, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision with out anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

(7) The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision.

3. The question whether a writ petition could be filed by the insurance company which admittedly, has limited grounds to contest a claim petition which has been the subject-matter of a decision rendered by the Full Bench of this Court in National Insurance Co. Ltd. Vs. Soma Devi and Others, in which the aforesaid judgment of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , has also been considered.

4. After considering the entire law on the subject and the powers vested in this Court under Articles 226 and 227 of the Constitution of India, the Full Bench held as follows:

(15) It, therefore, becomes abundantly clear that in all such like cases where the award on the face of it is a perversity, or is based on fraud, and the insurance company has no remedy under Motor Vehicles Act of either challenging the award in appeal or being either to have it recalled or reviewed by the Tribunal itself, the power of judicial review by this Court in the exercise of its extraordinary jurisdiction under Article 226/ 227 of the Constitution can always be invoked and exercised by this Court in dispensing justice to the parties.

5. We are bound by the decision of the Full Bench of this Court and according to

us the only two grounds on which the award passed by Motor Accidents Claims Tribunal can be challenged in a writ petition by the insurance company are that the award is perverse or that it is based on fraud. In the present case, there is no allegation of fraud and the only allegation is that the award is perverse.

6. We are of the considered view that if a Tribunal passes an award by totally ignoring the legal position as laid down by this High Court under whose jurisdiction it falls or by the Supreme Court, then the award can be said to be perverse. Merely because the award is high or excessive would not make the award perverse. However, if the Tribunal totally ignores the basic principles of law and acts in total violation of the principles relating to the grant of compensation then the award must be held to be perverse. Keeping in view the aforesaid principles of law, we proceed to decide the present case.

7. The claimants are the parents of the deceased Mohinder Pal, who was aged about 30 years and was working as teacher in Government Senior Secondary School, Takoli, District Una, H.P. He died in a motor vehicle accident and the parents claimed compensation. Learned Tribunal came to the conclusion that the deceased was drawing a total salary of Rs. 10,285 per month. Mohinder Pal was unmarried when the accident took place. The Tribunal has come to the conclusion that the age of the father of the deceased was about 52 years at the time of accident and the mother must have been a few years younger. The Tribunal purported to follow the multiplier method. It has deducted 1/3rd from salary of the deceased for his personal expenses, assessed dependency figure at Rs. 6,870 or Rs. 82,440 per annum, multiplier of 15 has been used and the compensation has been assessed at Rs. 12,36,600. In addition, Rs. 6,000 has been awarded on account of conventional damages/funeral charges and a total amount of Rs. 12,42,600 has been awarded as compensation.

8. The challenge to this award is basically on the following grounds:

(a) The learned Tribunal while assessing the dependency, has not taken into consideration the fact that the deceased in the near future would have got married and he would have his own family to support and the dependency of his parents would have been consequently reduced.

(b) The Tribunal has gravely erred in fixing the multiplier of 15.

The law with regard to assessment of compensation is well settled. In India, the multiplier system is being followed since long.

9. The principles with regard to the determination of compensation have been enunciated in various judgments. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Apex Court has held as follows:

(8) ...The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the

multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

10. The Supreme Court in this case held that multiplier method is the best method for determining the compensation. In para 11, it held thus:

(11) ...The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take, for instance, a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10 per cent annual interest, the interest will take care of the dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5 per cent per annum and not 10 per cent, then the multiplier needed to capitalise the loss of the annual dependency at Rs. 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last, etc. Usually in English courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.

(Emphasis supplied)

11. The Apex Court again considered the application of the multiplier system in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and approved the same. In para 15, it was held as follows:

(15) We thought it necessary to reiterate the method of working out "just" compensation because, of late, we have noticed from the awards made by the Tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused....

12. In H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, , Hon"ble Supreme Court awarded Rs. 1,95,000 and Rs. 2,07,000 in cases where the mothers were the claimants of young victims aged 22 and 21 years, the mothers were aged 45 and 40 years respectively and proper multipliers were held to be 15 and 16.

13. Though the Tribunal has noticed the decision rendered in H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, , wherein while applying the multiplier it has not been taken into consideration the fact that in those cases the deceased were only 21 and 22 years whereas in the present case, the deceased was 30 years. Another aspect which has to be borne in mind is that in a claim petition filed under the Motor Vehicles Act, the Tribunal while assessing the compensation must assess the dependency of the parents. In the present case, the father was aged about 52 years. He was also hale and hearty and there was no evidence on record to show that he was totally dependent on his son (deceased). We find that the learned Tribunal has not made any effort whatsoever to assess the dependency of the father.

14. It is by now well settled and it has been repeatedly held by this Court that in normal circumstances when the parents are the claimants, their dependency is to be assessed at 1/3rd of the total income. This is because the child would in normal course get married in near future. After the marriage, the deceased would have had his own spouse and family to look after and would not contribute that much amount to the parents. The normal rule is that the dependency of the parents should not be taken at more than 1/3rd of the income. However, this is not a cast iron proposition of law. Each case has to be decided on its own facts. There may be cases where the parents are not earning at all when the dependency may be assessed by the Tribunal at more than 1/3rd by giving reasons. There may be cases where there are a number of children and the parents cannot be held to be dependent only on one child or where the income of the parents is also substantial, the dependency of the parents can be reduced to below 1/3rd but in the absence of any special circumstances, this Court in a number of decisions including Himachal Road Transport Corporation and Others Vs. Krishna Devi and Others, has held that the parents dependency should be taken to be 1/3rd of the income of the deceased. This law has also been laid down by the Supreme Court in Donat Louis Machado and Others Vs. L. Ravindra and Others, wherein the Apex Court held as follows:

(3) ...On that basis, 12 months" earning would have been Rs. 45,000 and adopting a multiplier of 15 looking to the young age of the deceased total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs. 6,00,000 it can easily be visualised that the claimants who are the parents and unmarried sister and who are dependent on him would have got at least 1/3rd amount as he would have spent the rest of 2/3rd amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2,00,000. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to their breadwinner....

(Emphasis supplied)

15. Similarly in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , the Apex

Court in para 8, held as follows:

(8) ...The deceased, a young boy of 24 years old, was unmarried and the claimants were his father and mother, the dependency has to be calculated on the basis that within two or three years the deceased would have married and raised family and the monthly allowance he was giving to his parents would have been cut down....

In this case, the ages of the parents were between 45 and 50 years and multiplier of 12 was held to be applicable.

16. In the present case, the deceased as observed was 30 years old. He was in government job and over a period of time, his salary would have been increased. Had he been alive, he would have got married in near future and would have his own family to look after and his contribution towards his parents would have been sub-stantially reduced.

17. The Supreme Court in *The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others*, dealt with a proper method of compensation under the Motor Vehicles Act. In that case, the deceased was aged 34 years. The claimants were his widow and children and the Supreme Court held that keeping in view the entire law, the appropriate multiplier to be used would be 13.

18. In *The New India Assurance Company Limited Vs. Smt. Kalpana and Others*, , has again dealt in detail with the question as to what is the appropriate multiplier to be applied and the principles relating to the grant of compensation. The deceased in this case, before the Tribunal was aged 33 years at the time of the accident. The claimants were his widow, mother and children. The Apex Court again fixed the multiplier of 13.

19. After considering the entire law on the subject, we are of the considered view that the award of the learned Tribunal is absolutely perverse inasmuch as the Tribunal has totally ignored the well settled principles relating to the grant of compensation. The dependency of the parents in normal circumstances cannot be taken at more than 1/3rd of income of the deceased. The multiplier of 15 applied is also very high. The award is so high that it can easily be termed to be perverse and calls for interference in exercise of our extraordinary writ jurisdiction.

20. The income of the deceased was about Rs. 10,300. Keeping in view the law referred to above and taking into consideration the future prospects of the deceased, the dependency of the parents is assessed at Rs. 4,000 per month or Rs. 48,000 per annum. Keeping in view the age of the parents and accepting the fact that the mother was aged between 45 and 50 years and father was 52 years old at the time when the accident occurred, we feel that the appropriate multiplier would be 12. The total compensation, therefore, works out to Rs. 5,76,000. The parents are also awarded Rs. 10,000 for loss of love and affection and another sum of Rs. 14,000 for funeral expenses and conventional damages.

The total compensation to which the claimants are entitled to is Rs. 6,00,000.

21. In view of the above discussion, the writ petition is allowed and the award of the learned Tribunal is set aside and the same is reduced from Rs. 12,42,600 to Rs. 6,00,000. The claimants shall also be entitled to interest on this amount at the rate of 9 per cent per annum from the date of filing of claim petition, i.e., 17.12.2001 till realisation or deposit of the amount.

The amount is apportioned as follows

(1) Prem Chand, father Rs. 2,00,000 (2) Ram Piari, mother Rs. 4,00,000

The petition is disposed of in the aforesaid terms. No costs.