

(1998) 01 GAU CK 0002

In the Gauhati High Court

Case No : Writ Appeal No. 18 of 1997 in C.R. No. 147 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Sabitri Rabi Das and Others

RESPONDENT

Date of Decision : 16-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149, 166

Citation : (1998) ACJ 1064

Hon'ble Judges : P.K. Sarkar, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Biswas, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—This is an appeal against the order dated 20.2.1997 of the learned single Judge dismissing the Civil Rule No. 147 of 1997 filed by the appellant/writ petitioner.

2. The facts briefly are that one Balaram Rabi Das died in a motor accident and respondent Nos. 1 to 4 who are his legal heirs filed an application u/s 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs. 7,02,800/- from the owner and the appellant insurance company which was numbered as TS (MAC) No. 86 of 1993. The Motor Accidents Claims Tribunal, West Tripura, Agartala, awarded a total compensation of Rs. 2,28,000/- in favour of claimant-respondent Nos. 1 to 4 and against the appellant insurance company by its judgment and award dated 18.5.1996. The appellant insurance company thereafter filed a review application before the said Tribunal which was numbered as Civil Misc. Case No. 123 of 1996. But the said review application was rejected by the Tribunal by order dated 8.1.1997. Aggrieved, the appellant insurance company filed a petition under Articles 226 and 227 of the Constitution which was registered and numbered as Civil Rule No. 147 of 1997 and was dismissed by the learned single Judge by the impugned judgment and order dated 20.2.1997.

3. Mr. D.K. Biswas, learned Counsel for the appellant insurance company, contended that despite the fact that the Supreme Court had time and again held that the maximum multiplier that should be applied for the purpose of calculating the amount of compensation payable to the claimants should not exceed 18, the Tribunal in this case had applied multiplier of 35 while calculating the amount of compensation. Mr. D.K. Biswas cited the judgment of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, for the authority that the maximum multiplier that can be applied by the Tribunal is 18. He contended that the Tribunal, in so far as it ignored the aforesaid law laid down by the Apex Court, exceeded its jurisdiction and that this Court in exercise of its power under Article 227 of the Constitution can set aside the order of the Tribunal and direct the Tribunal to recalculate compensation in accordance with the principles laid down by the Apex Court in the said decision. To a query by the Court as to why an appeal was not preferred by the appellant against the award of the Tribunal, Mr. Biswas submitted that under Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, the grounds for defence available to the insurer do not include a defence that the compensation claimed by the claimants is excessive. He further explained that a Full Bench of this Court has already held in the case of United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, that the insurer cannot in an appeal against an award of the Tribunal urge any ground other than those specified in Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988. Mr. Biswas stated that it is for this reason that the appellant insurance company was unable to file an appeal before this Court under the Motor Vehicles Act, 1988, against the award of the Tribunal and has instead filed an application under Articles 226/227 of the Constitution which was dismissed by the learned single Judge by the impugned judgment and order.

4. We have carefully perused the judgment of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, cited by Mr. Biswas and we find that in para 15 of the said judgment the Supreme Court observed that it has come to its notice that Claims Tribunals and Courts have not been following the multiplier method for determining the compensation payable in motor accident claims cases and that a hybrid method based on subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. In the said judgment, the Supreme Court found that in the case that was before it, the Tribunal had used a multiplier of 24 and the High Court had raised the multiplier to 34 and the Supreme Court observed that both the Tribunal and the High Court had showed lack of awareness of the background of the multiplier system in Davies case (1942) AC 601, but did not interfere with the amount awarded in the case as it found that a very low multiplicand was used to calculate the loss of dependency.

5. In the facts of the present case, we find that the multiplier method as has been explained by the Supreme Court in para 15 of the aforesaid judgment has

not been applied by the Tribunal to determine the multiplicand and that a different method for calculating the compensation has been applied by the Tribunal and a total compensation of Rs. 2,28,000/- has been awarded to the claimants-respondents. Since the Tribunal has not adopted the multiplier method for determining the multiplicand in the present case, the argument of Mr. Biswas that the multiplier of 35 should not have been adopted in this case for the purpose of working out the just compensation cannot be accepted because one has to first find out the correct multiplicand in accordance with the multiplier method as explained in para 15 of the judgment of the Supreme Court referred to above in order to apply the appropriate multiplier not exceeding 18. Such an exercise, in our opinion, cannot be undertaken by this Court in exercise of the powers under Articles 226/227 of the Constitution. We are also not inclined to remit the matter back to the Tribunal for re-calculation of the just compensation in accordance with the multiplier method as explained by the Apex Court in the aforesaid judgment in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, because the accident took place as far back as on 10.2.1993 and the claimant-respondent Nos. 1 to 4 have been waiting for more than four years to receive the compensation and the compensation amount has in fact been paid to the adult respondents and deposited in the bank for the benefit of the minor respondents pursuant to the orders passed by this Court on 11.3.1997 in Civil Misc. Case No. 169 of 1997. We, however, hope that in future, the Motor Accidents Claims Tribunals under our jurisdiction will follow the law as laid down by the Supreme Court in the case of U.P. State Road Trans. Corporation v. Trilok Chandra (supra).

6. In the result, we are not inclined to entertain this writ appeal, and, accordingly, dismiss the same. However, looking to the entire facts and circumstances of the case, we make no order as to costs.

7. Copy of this judgment and order be sent by the Registry of this Court to all the Motor Accidents Claims Tribunals under the jurisdiction of this Court.