
(2000) 08 PAT CK 0037
In the Patna High Court
Case No : A.F.O.O. No. 250 of 1992 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Savitri Devi and Others

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2002) ACJ 1487 : (2001) 49 BLJR 64 : (2001) 1 PLJR 111

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; S.N. Lal and G.C. Jha, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sinha, J.—The present appeal has been filed against the judgment and award dated 29.8.1992 and 21.9.1992 respectively passed by the 1st Additional Judicial Commissioner-cum-Motor Accidents Claims Tribunal, Ranchi in Compensation Case No. 102 of 1986 whereby the learned Tribunal had awarded a sum of Rs. 1,95,000 as compensation to the claimants-respondents with interest at the rate of 15 per cent per annum on the entire amount from 20.6.1986 till the date of the realisation. The Tribunal also ordered that if the amount is not paid within two months from the date of the order, the claimants shall be entitled to interest at the rate of 18 per cent per annum.

2. The relevant facts giving rise to the instant appeal are that on 2.2.1986, the deceased Ramcharitra Singh was going to Itki from Ranchi on TVS 50 bearing the registration No. BPV 7079 and near Bajra Bridge bus bearing registration No. BHH 8283 which was coming from the opposite direction being driven in a rash and negligent manner dashed against the TVS and ran over the deceased, namely, Ramcharitra Singh, who died instantaneously. It was claimed that Ramcharitra Singh was the only bread-earner and the whole family consisting of his widow and children have been put to financial hardship and so, claimants claimed a sum of Rs. 2,00,000 (rupees two lakh) as compensation with interest

at the rate of 18 per cent from the date of institution till the realisation of the amount besides further sum of Rs. 10,000 (rupees ten thousand only) on account of funeral expenses. A police case was also instituted and it was the case of claimants that at the time of the death, the deceased was aged about 30 years and was doing the job of a mechanic and thereby he was earning a sum of Rs. 1,000 per month.

3. The learned Tribunal framed the following issues in the case:

(i) Whether there was accident involving death of Ramcharitra Singh arising out of the use of motor vehicles bearing registration Nos. BHH 8283 (bus) and BPV 7079 (TVS 50)?

(ii) Whether the accident occurred due to rash and negligent driving of the vehicle?

(iii) Whether the O.P. Nos. 1 and 2 are liable to pay compensation or O.P. Nos. 3 and 4 are also liable to pay compensation?

(iv) Whether the claimants are entitled to compensation, if so, the quantum thereof?

(v) Whether the claim for compensation is maintainable?

The learned Tribunal decided issue Nos. (i) and (ii) in favour of the claimants and while deciding issue No. (iv) the Tribunal came to the conclusion that the claimants were entitled to get a sum of Rs. 1,95,000 as compensation. Accordingly, the remaining two issues were decided in favour of the claimants.

4. A cross-objection was filed on behalf of the owner of the vehicle, namely, Md. Azam, but in the course of hearing of this appeal, the same was not pressed.

5. Learned counsel appearing for the appellant insurance company vehemently argued that the learned Tribunal has committed error in adopting 30 as multiplier and the multiplier cannot exceed 18, in view of the decision in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . The learned counsel then assailed the award in respect of the rate of interest awarded by the Tribunal which is 15 per cent and in case of non-payment within two months 18 per cent per annum. It was the submission of the learned counsel that in various decisions of the Supreme Court 12 per cent interest has been considered to be reasonable and for this, he has relied upon the decision in the case of Oriental Insurance Co. Ltd. Vs. Usha, .

6. On the other hand, learned counsel for the respondents-claimants has submitted that the appeal filed by the insurance company is not maintainable, inasmuch as the insurance company has not obtained the leave u/s 170 of the Motor Vehicles Act. In support of his contention, learned counsel has relied upon an unre-ported decision of this court in the case of Oriental Insurance Co, Ltd. v. Sobha Devi MA. No. 10 of 1998, where it was held that the appeal preferred by the insurance company is not maintainable because no leave has been obtained

u/s 170 of the Motor Vehicles Act. Against the aforesaid decision, a L.P.A. bearing L.P.A No. 516 of 1999 (R) was preferred before the Division Bench of this court which was also dismissed. It was, therefore, submitted that the present appeal is liable to be dismissed on the aforesaid ground.

7. The provision of Section 170 of the Motor Vehicles Act may usefully be quoted as hereunder:

170. Impleading insurer in certain cases.-Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

In my humble view, there are two exigencies as provided u/s 170 (a) and (b) of the Motor Vehicles Act which is a condition precedent for the application of Section 170 of the said Act. In the instant case, the position is otherwise, inasmuch as the claimants had made the insurance company and the owner of the bus as party in the claim case from the very beginning and both had contested the claim case. As such, the two exigencies as provided u/s 170 (a) and (b) of Motor Vehicles Act are not present so that there may be applicability of Section 170 of the said Act. I am, therefore, of the view that since the insurance company and the owner of the bus were impleaded as party in the case from the very beginning and both of them had contested the case, there was no necessity of obtaining any leave from the court to contest the claim. Hence, in such view of the matter, the appeal cannot be rendered as not maintainable.

8. The learned counsel for the respondent strenuously argued that the insurance company cannot challenge the quantum of compensation or the interest allowed by the Tribunal which is also a part of the compensation and it could have contested the claims only on the grounds as mentioned in Section 149(2) of the Motor Vehicles Act. Therefore, the argument of the insurance company that wrong multiplier was adopted by the Tribunal or interest at the rate of 15 per cent per annum was allowed and penal interest at the rate of 18 per cent was allowed in the event of non-payment of the compensation amount within two months from the date of the order cannot be entertained in this appeal. It is true that the insurance company can contest the claim only on the grounds as mentioned in Section 149(2) of the Motor Vehicles Act. But, so far as the

questions of adopting wrong multiplier by the Tribunal and allowance of excessive interest are concerned, this is a matter which will be mainly governed by several judicial pronouncements and it has been held in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , that multiplier cannot exceed 18 years" purchase factor. In the instant case the learned Tribunal has adopted multiplier of 30 which appears manifestly wrong in view of the above quoted decision.

9. I find from the impugned award that learned Tribunal had committed another mistake by deducting Rs. 400 on account of personal expenses of the deceased while holding that the monthly income of the deceased was Rs. 1,000. Even accepting that the monthly income of the deceased was Rs. 1,000 which comes to Rs. 12,000 per annum the maximum amount which could be deducted by the Tribunal on account of personal expenses of the deceased should not have exceeded 73rd of his total income and if 1/3rd of his income is deducted, the annual dependency income of the deceased would come to Rs. 8,000 per annum and even if the multiplier of 18 is adopted the amount comes to Rs. 1,44,000. Therefore, the method of calculation adopted by the learned Tribunal requires modification. That apart, the Tribunal has not taken into consideration the prospect of future income of the deceased. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , where the income of the deceased was Rs. 1,032 per month only, the Supreme Court held that having regard to the prospects of advancement in future career of the deceased the claimants were entitled to get compensation by estimating gross monthly income at Rs. 2,000. Therefore, applying the same principle if the prospect of future income of the deceased is taken into consideration which the learned Tribunal has not taken, it would appear that the claimants might have been entitled to get more compensation than what has been awarded by Claims Tribunal. But, since no cross-appeal has been preferred on behalf of the claimants, the amount of compensation awarded by Claims Tribunal cannot be enhanced. But, certainly the amount of compensation awarded by Claims Tribunal cannot be considered to be excessive. Therefore, the amount of compensation awarded by the Tribunal is affirmed.

10. So far as the rate of interest is concerned, the Tribunal has awarded 15 per cent interest over the amount of compensation which, in my considered view, appears to be excessive. Therefore, the rate of interest as awarded by the Tribunal at the rate of 15 per cent per annum is reduced to 12 per cent per annum from the date of claim till the date of realisation.

11. In the result, this appeal is dismissed with the modifications as indicated above.