
(2007) 06 SHI CK 0041
In the High Court Of Himachal Pradesh

New India Assurance Company	Vs	APPELLANT
Mamta Garg and Others		RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2007) 3 ShimLC 122

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This petition is directed against the award dated 1.10.2004 passed by the learned Motor Accident Claims Tribunal, Solan.

2. The brief facts necessary for the adjudication of this petition are that the claim petition u/s 166 of the Motor Vehicles Act, 1988 for the grant of compensation on account of death of Vinod Garg age 51 years was filed by the claimants No. 1 to 4 before the Tribunal being the MAC Petition No. 14-S/2 of 2004. Shri Vinod Garg was working as Assistant Accounts Officer in the H.P. State Electronics Development Corporation Limited and was drawing Rs. 17,000/- per month as salary besides having rental income of Rs. 3,000/- per month. Sh. Vinod Garg died on 26.12.2003 due to the rash and negligent driving of the driver Sh. Vidya Sagar. The learned MACT had framed the following issues:

1. Whether the accident, in question, took place due to rash or negligent driving of car No. HP-22-4338 by respondent No. 1, as alleged? OPP
2. If issue No. 1 is proved, whether Shri Vinod Kumar Garg for whose death compensation has been claimed died in that accident and the petitioners are entitled to compensation, if so, how much and from whom? OPP
3. Whether respondent No. 1 did not possess a valid and effective driving licence to drive the vehicle, in question, at the relevant time? OPR-3

4. Whether there was no valid Registration Certificate in respect of the vehicle in question at the time when accident took place, if so, its effect? OPR-3

3. The Tribunal had awarded a sum of Rs. 13,18,260/- to the claimants with costs and interest @ 9% per annum from the date of the petition to the date of deposit.

4. Mr. K.D. Sood, Advocate appearing on behalf of the petitioner had strenuously argued that the award of Rs. 13,18,260/- is exorbitant and the learned Tribunal had divided the income of Shri Vinod Garg i.e. Rs. 7,000/- and Rs. 5,515/- and separate multipliers of 10 and 7 had been applied.

5. Mr. Bhupender Pathania, Advocate appearing on behalf of the respondents/claimants has supported the award dated 1.10.2004.

I have heard the parties and perused the record.

6. The age of the deceased Shri Vinod Garg was 51 years at the time of his death in the month of December, 2003. His gross salary was Rs. 16,818/- per month as per Ex.PB issued by the employer. The Hon'ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , has explained the multiplier method of computation as under:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing 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.

7. It is admitted fact that the income of the deceased Shri Vinod Kumar Garg was about Rs. 17,000/- per month which is treated to be his gross income. From this, his personal living expenses are to be deducted and normally it has to be the 1/3rd of the gross income. Thereafter the loss of dependency is to be capitalized with appropriate multiplier. In the present case this Court can take Rs. 12,000/- per month or Rs. 1,44,000/- per year as loss of dependency and thereafter if capitalized multiplier of 11 on the basis of structured formula framed u/s 163-A of the Motor Vehicles Act, 1988, is worked out, the compensation will be Rs. $1,44,000 \times 11 = 15,84,000/-$ to which the usual award for loss of consortium and loss of the estate each in the conventional charges sum of Rs. 15,000/- is to be added.

8. Accordingly the just compensation to which the claimants were entitled was Rs. 15,84,000/- but the learned MACT has only awarded a sum of Rs. 13,18,260/T. Once the multiplier method of computation is applied, the entire income has to be clubbed together and thereafter working out the loss of dependency should be

capitalized with proper multiplier. If the learned MACT had applied the formula as explained above for treating the entire income as gross income, the claimants definitely would have been benefited by Rs. 2,65,740/-. A Division Bench of this Court in National Insurance Co. Ltd. Vs. Soma Devi and Others, has held as under:

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 the 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 Articles 226/227 of the Constitution can always be invoked and exercised by this Court in dispensing justice to the parties.

9. This Court is of the opinion that there is no perversity in the award dated 1.10.2004 and to the contrary the claimants have not been paid the just and fair compensation to which they were entitled after taking the gross income of Rs. 17,000/- per month of the deceased Shri Vinod Kumar Garg and thereafter working out the loss of dependency and applying appropriate multiplier.

10. Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.