(2006) 11 SHI CK 0011

In the High Court Of Himachal Pradesh

New India Assurance Company APPELLANT

Vs

Shankar Lal and Others RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 1 ACC 776

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This appeal by the Insurance Company is directed against the award passed by the learned Motor Accident Claims Tribunal, Solan in MAC Petition No. 101-S/2 of 2004, decided on 1.8.2005.

2. Briefly stated the facts of the case are that the petitioners are the parents of deceased Yash Pal, who died in a motor vehicle accident involving truck No. HP-11B-5135 which was owned by Gulab Devi, driven by Satnam Singh and insured with the appellant, New India Assurance Company. The petitioners filed a petition claiming compensation u/s 163A of the Motor Vehicles Act. The learned Tribunal rightly came to the conclusion that the notional income of the deceased, who was a non-earning person being only 6 years old, could be taken at Rs. 15,000 per annum and that the multiplier applicable in the case was 15. After observing this, the learned M.A.C.T. came to the conclusion that Rs. 3,60,000 was the assessable compensation out of which 1/3rd was to be deducted. How this calculation was arrived at is not clear from the award. It appears that the learned Tribunal just blindly followed the table given in Schedule II of the Motor Vehicles Act and against item No. 1 (age 0-15 years) he went to the income of Rs. 18,000 and took Rs. 3,60,000 as the total income and thereafter deducted 1/3rd as provided under the Schedule. He after awarding Rs. 2,000 for funeral expenses andRs. 2,500 for loss to the estate, awarded Rs. 2,44,550 in all.

3. The Insurance Company filed a petition for review of the said order and the learned Tribunal without any application of mind concluded that there is no

mistake apparent on the face of record and the compensation is in accordance with Schedule II of the Motor Vehicles Act and dismissed the review petition.

4. Mr. K.D. Sood, learned Counsel for the Insurance Company has urged that since the deceased was only 6 years old child and in course of time would have got married, the dependency of the parents cannot be taken more than 1/3rd. This argument may be attractive in cases arising u/s 166 of the Motor Vehicles Act. However, in cases u/s 163A the compensation has to be calculated and awarded strictly in terms of the Act and neither one paise more nor one paise less can be awarded by the Court. Hence this contention is rejected.

5. I, however, find that there are many mistakes apparent on the face of record of the award of the learned Tribunal. If the notional income of the deceased is taken at Rs. 15,000 and multiplier of 15 is applied, then the total earning comes to Rs. 2,25,000. Out of ths, 1/3rd has to be deducted for the personal expenses of the deceased leaving a balance amount of Rs. 1,50,000. To this has to be added Rs. 2,000 payable to the claimants for funeral expenses and Rs. 2,500 for loss to the estate. The compensation payable, therefore, works out to Rs. 1,54,500.

6. The learned Tribunal has shown total non application of mind and has also not followed the law laid down by the Apex Court. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Apex Court while dealing with Schedule II of the Motor Vehicles Act held as follows:

17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Section 163 A and 163B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 165A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicates the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be upto 18 and not 16 as was held in Susamma Thomas case.

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3,000. The total should be 3,000 ? 15 = 45,000 but the same is worked out at Rs. 60,000. Similarly, in the second item the

multiplier is 16 and the annual income is Rs. 9,000; the total should have been 1,44,000 but is shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide....

7. In view of the aforesaid judgment of the Apex Court and in view of the fact that there are apparent mistakes in the Schedule, the Tribunals constituted under the Motor Vehicles Act should not follow the Schedule blindly and should verify whether the multiplier when applied to the income of the victims results in the same figure as given in the Schedule or not. It appears that in item No. 1 relating to people aged upto 15 years in all cases multiplier of 20 has been used instead of 15 as mentioned under the heading ''Multiplier''. Similarly in second item where the age of victim is 15 to 20 years, multiplier is mentioned as 17, but in actual fact the multiplier of 19 has been applied across the board. In the age bracket of 20 to 25, multiplier given is 17, but the multiplier applied appears to be 18. In the age bracket of 25 to 30, multiplier applicable is 18, but in the table, the multiplier actually applied is 17. These instances can be multiplied and only go to show that there are many mathematical mistakes in the Schedule and the learned Tribunals should not blindly follow the same. They should ensure that they make their own calculations and in case the same do not tally with the Schedule, their own calculations should prevail.

8. A copy of this judgment be circulated to all the Motor Accident Claims Tribunals in Himachal Pradesh.

9. In view of the above discussion, the appeal is allowed and the compensation reduced from Rs. 2,44,500 to Rs. 1,54,500. The claimants shall be entitled to interest on this amount at the rate of 9% per annum w.e.f. 15.10.2004 till date of deposit. It is further ordered that the amount shall be apportioned among the petitioners as follows:

1. Shanker Lal = 54,500.

2. Smt. Champa Devi = Rs. 1,00,000.

10. Keeping in view the fact that the matter has been finally disposed of, it is ordered that the amount falling to the share of applicants along with proportionate interest shall be paid to them by remitting the same to their bank accounts, details whereof shall be furnished by the learned Counsel for the applicants-claimants within 2 weeks from today. The excess amount along with proportionate interest, if any, be refunded to the Insurance Company by remitting the same to its bank account, details whereof shall be furnished by the learned Counsel for the Insurance Company within 2 weeks from today.