

(2002) 07 RAJ CK 0125

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 112 of 1996

New India Assurance Company Ltd.

APPELLANT

Vs

Hans Kanwar and Others

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2003) 3 RLW 1959 : (2003) 1 WLC 286

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : D. Maheshwari, H.S. Sandhu, R. Chauhan, for the Appellant;

Judgement

Panwar, J. 1. These two appeal raise common question of law and facts are directed against the judgment and award dt. 21.10.1995 passed by learned Motor Accident Claims Tribunal, Bali (hereinafter referred to as "the Tribunal"), whereby the Tribunal awarded compensation of Rs. 7,75,000/- in favour of the appellants in S.B. Civil Misc. Appeal No. 31/96 who were claimants before the Tribunal (hereinafter referred to as "the claimants").

2. Aggrieved by the judgment and award impugned, the insurance company as well as claimants preferred the aforesaid two appeals.

3. I have heard learned counsel for the parties. Perused the judgment and award impugned as also the record of the Tribunal.

4. It is contended by the learned counsel the insurance company that the deceased Ugam Singh himself was contributory negligent for the accident in question. He contended that on 10.4.1990 at about 2.00 P.M. while deceased Ugam Singh and Parbat Singh were proceeding from Sanderao to Sumerpur on a motorcycle, they collided with the truck No. HYK-2421, at the relevant time, the deceased Ugam Singh, who was riding the motorcycle, had no driving licence and, therefore, it is to be assumed that he was driving the motorcycle rashly and was contributory negligent for the said accident. He contended that this plea was

taken by the insurance company in the written statement before the Tribunal on which the Tribunal framed the issue No. 3. It was further contended by learned counsel for the insurance company that the compensation awarded by the Tribunal is too excessive as in the instant case, while computing the compensation, the Tribunal applied the multiplier of 20 years purchase factor, which is on higher side.

5. Learned counsel, Shri D. Maheshwari appearing for the claimants contended that claimants have pleaded and proved the negligence of driver of the offending truck respondent Mahendra Singh. Before the Tribunal, eye-witness of occurrence AW.3 Sher Singh was examined, who stated on oath before the Tribunal that on 10.4.1990, he was going from his village Khiwandra to Sumerpur along with one Jabar Singh, who was pillion rider on the motorcycle, when they were near to Sindru, at that relevant time, Ugam Singh and Parbat Singh were also going 50 feet ahead of them on a motorcycle. They were proceeding towards Sumerpur, at that relevant time, truck No. HYX-2421 came from opposite direction, which was driven at a great speed rashly and negligently by its driver, Mahendra Singh suddenly come to its wrong side of the road and hit the motorcycle driven by Ugam Singh. Due to this accident, Ugam Singh and pillion rider Parbat Singh both succumbed to injuries instantaneously. On being asked, the driver of the truck disclosed his name to be Mahendra, he went to Sanderao Police Station and lodged the first information report Ex. 3. In cross-examination, testimony of this witness remained unshaken.

6. I have carefully gone through the pleadings of the parties and the statement of AW.3, an eye-witness of the occurrence as also the author of first information report Ex.3. Accident took place at 2.00 P.M. and AW.3. Accident took place at 2.00 P.M. and AW.3 Sher Singh lodged a first information report with Police Station, Sanderao at 2.40 P.M. Thus, a prompt FIR was lodged- of this accident giving the details of the accident. After investigation of the criminal case, police found the driver negligent of the said accident and accordingly filed the charge-sheet Ex.1 against respondent truck driver. Thus, matter was investigated by the police promptly and soon after the accident, site map Ex.4 and site inspection note was prepared, wherein the said truck is shown to be on extreme wrong side of the road and the motorcycle lying under the wheel of the truck, which was on its correct side. Presence of AW.3 Sher Singh at the site of accident has not been doubted. The Tribunal on appreciation of the evidence, reached to the conclusion that the driver of the offending truck was solely negligent for the said accident and accordingly, the Tribunal held the respondent Mahendra Singh negligent for causing the said accident.

7. Having considered the entire material and the evidence produced by the claimants, I am of the considered opinion that the finding recorded by the Tribunal is based on legal evidence and on sound reasoning holding the truck driver negligent for the said accident. Hence, I find no error in the finding recorded by the Tribunal in this regard. The Tribunal has framed issue No. 3 on

the point of contribute negligence. This issue was framed at the instance of insurance company. Indisputably, the burden to prove the issue No. 3 was on insurance company who led no evidence and, therefore, the Tribunal decided the issue No. 3 against the insurance company and in my considered opinion rightly so. Learned counsel for the insurance company contended that compensation awarded by the Tribunal is too excessive.

8. I have scanned and evaluated the evidence on record. In the claim petition, it was pleaded by the claimants that deceased Ugam Singh was earning Rs. 10,000/-per month by running a small diamond polishing factory at Dhanera, District Banas Kanta, Gujarat. In the said factory about 15-16 workers were engaged and overall monthly income of the deceased was Rs. 10,000/-.

9. In the written statement filed by the insurance company, the facts pleaded by the claimants in Para No. 4 showing the monthly income of the deceased were not specifically denied. AW. 1 Hands Kanwar wife of deceased deposed before the Tribunal on oath that her husband was running a diamond polishing factory at Dhanera, District Banas Kanta, Gujarat and in the said factory, 15-20 other persons were working under him and after incurring all expenses, deceased used to save Rs. 6000-7000/- per month. AW.2 Lakh Singh, father of the deceased also made the similar statement. AW. 4 Babu, one of the workers of the said factory, deposed on oath before the Tribunal that deceased Ugam Singh had a diamond polishing factory at Dhanera in which he was working since June, 1990. In addition to him, 15-16 workers were also working in the said factory. Deceased used to bring raw material of the diamond for polishing in his factory. He has produced his own account, which was maintained while he was working in the factory owned by the deceased. Evidence produced by the claimants remained uncontroverted. Admittedly, insurance company, driver and owner of the offending truck did not lead any evidence in rebuttal. The Tribunal relying on unrebutted evidence of the claimants conservatively, determined the monthly income of the deceased at Rs. 5,000/-. While computing the compensation, the Tribunal also held that out of the earning, the deceased used to contribute Rs. 4000/-per month to the claimants, as such the annual dependency comes to Rs. 48,000/-, this amount was multiplied by 20 years purchase factor. Thus, under the head of loss of income, the Tribunal computed Rs. 9,60,000/-, out of this amount, the Tribunal deducted Rs. 1,92,00/- on account of lump sum payment, to this added Rs. 8000/- for the loss of company consortium etc. and awarded total amount of Rs. 7,75000/-. So far as multiplier of 20 years purchase factor in concerned, it is slightly on higher side.

10. In U.P. State Road Transport Corporation v. Trilok Chandra (1), Hon''ble Supreme Court held that multiplier cannot exceed 18 years purchase factor in view o the Second Schedule to Section 163A of Motor Vehicles Act, 1998. In the instant case, the deceased was a young person of 25 years of age at the time of accident. He was at the beginning of his career. The income which he used to earn at the beginning of his career would not have frozen for all time to come. As

evident from the record, the deceased has a future prospects. The Tribunal failed to take into consideration the future prospects of advancement in life and career of the deceased.

11. In General Manager Kerala State Road Transport Corporation v. Susamma Thomas (2), Hon"ble Supreme Court held as under:

"Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand."

12. It is settled law that while computing the compensation, the future prospects of the deceased person is to be taken into account in terms of money to augment the multiplicand.

13. Considering the evidence on record in the instant case in its entirety, I am of the considered opinion that for the purpose of computation of compensation considering the future prospects of the deceased, his monthly income can safely be taken to be at Rs. 7000/- deducting therefrom Rs. 2500/- per month as personal living expenses of the deceased, the monthly contribution to claimants comes to Rs. 4500/- as such the annual dependency works out to Rs. 54,000/-, this amount needs to be multiplied by multiplier of 18 years purchase factor. Thus, the loss of income works out to Rs. 9,72,000/-, to this added a sum of Rs. 15,000/- for loss of company consortium and Rs. 15,000/- for loss of estate. Thus total compensation works out to Rs. 10,02,000/- rounded to Rs. 10,00,000/-. As against this amount, the Tribunal computed Rs. 9,60,000+10,000 = 9,70,000/- but deducted a sum of Rs. 1,92,000/- on account of lump sum payment. This deduction made by the Tribunal is not justified.

14. In General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Ors. (supra), the Hon"ble Supreme Court held that the multiplier method is logically sound that legally well established. The determination of the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted as percentage therefrom towards uncertainties of future life and for immediate lump sum payment is wholly impermissible. The Hon"ble Supreme Court held that a deduction of the percentage towards uncertainties of future life and immediate lump sum of payment is unscientific.

15. In Hardeo Kaur and Ors. v. Rajasthan State Transport Corporation and Anr. (3), the Apex Court held that the deduction of 173 out of the assessed compensation on account of lump sum payment is not justified. This view was reiterated by Apex Court in Urmila Pandey and Ors. v. Khalil Ahmad and Ors. (5), wherein their Lordships held that Tribunal fell in error in making 33% deduction for lump sum payment.

16. In view of the law propounded by the Hon"ble Supreme Court in the cases referred herein above, I am of the considered opinion that the Tribunal was not justified in deducting a sum of Rs. 1,92,000/- from the total compensation

amount computed on account of lump sum payment and, therefore, to this extent the finding of the Tribunal is set aside. However, on proper computation, the total compensation works out to Rs. 10,02,000/- rounded to Rs. 10,00,00/- to which the claimants are entitled.

17. So far as point of interest is concerned, the Tribunal awarded interest at the rate of 12% per month and in default of payment within two months from the date of award, rate of interest should be 15%. This appears to be on higher side. Hon''ble Supreme Court in *Kaushnuma Begum (Smt.) and Ors. v. New India Assurance Company Ltd. and Ors.* (5), has held that earlier 12% was found to be a reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India, The interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one years. Keeping in this view, the Hon''ble Supreme Court awarded interest at the rate of 9% per annum from the date of claim. In this view of matter, the claimants are entitle for interest at the rate of 9% per annum from the date of claim application till realisation.

18. In view of the aforesaid discussion, I find no merit in the appeal filed by the insurance company. Accordingly, S.B. Civil Misc. Appeal No. 112/1996 is dismissed. S.B. Civil Misc. Appeal No. 31/96 filed by claimants is allowed to the extent that the compensation is enhanced to Rs. 10,00,000/-. This amount shall carry interest at the rate of 9% per annum from the date of application till realisation. The insurance company is directed to pay the aforesaid amount to the claimants by depositing it is the Tribunal. Once such deposit is made, the same shall be disbursed to the claimants in accordance with the principles laid down by Hon''ble Supreme Court in *General Manager Kerala SRTC v. Susamma Thomas* (supra). There shall be no order as to costs.