

(1982) 02 GAU CK 0001
In the Gauhati High Court
Case No : M.A. (F.) No. 58 of 1976

New India Assurance Company Ltd.

APPELLANT

Vs

Hareswar Dev Sarma and Others

RESPONDENT

Date of Decision : 10-02-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1985) 57 CompCas 733

Hon'ble Judges : D. Pathak, Acting C.J.;K.N. Saikia, J

Bench : Division Bench

Advocate : P. Choudhury and A.K. Choudhury, for the Appellant; A.S. Bhattacharrya, for the Respondent

Final Decision : Dismissed

Judgement

Saikia, J.—The insurer's first appeal u/s 110D of the M.V. Act, 1939, is from an award of the Motor Accidents Claims Tribunal, Kamrup.

2. On April 9, 1971, at about 9.30 a.m. one Niranjana Sarma, aged 22 years, was proceeding on his bicycle through the National Highway towards Boroma West near the PWD Sub-Divisional Office when a new truck (chassis only) owned by Shri Tilok Chandra Kachari, respondent No. 2, and driven by Md. Raffique Sheikh, respondent No. 3, knocked him down from behind as a result of which he was injured on his head and he died at the Gauhati Medical College Hospital on the same day at 11.30 p.m. Respondent No. 1, Shri Hareswar Dev Sarma, father of Niranjana Sarma, claimed compensation of Rs. 20,000 only, naming the appellant as the insurer of the vehicle alleging rash and negligent driving. Before the Tribunal, the appellant and respondents Nos. 2 and 3 filed separate written statements. The owner denied that the vehicle was being driven with rashness or negligence; stated that the deceased who was just learning cycling suddenly lost his balance and fell by the hind portion of the truck (chassis) and thus fully contributed towards his death; and that the claim of Rs. 20,000 was excessive ; and that he had no personal liability as the vehicle was fully insured with the

appellant. The driver, while supporting the owner, stated that he was neither negligent nor reckless in driving; and that he was not personally liable to pay any compensation. The appellant denied everything except that the vehicle was insured with them and contended that the claim was excessive and without any basis. . Four issues were framed, namely, (1) Whether there was a cause of action; (2) Whether Niranjan's death was due to the accident; (3) Whether the accident was due to rash and negligent driving; and (4) Whether and, if so, how much compensation was payable.

3. The claimant examined eight witnesses including himself, while the owner and the driver examined themselves. The Tribunal decided all the issues in favour of the claimant and awarded Rs. 20,000 (rupees twenty thousand) plus interest at 6%, and costs Rs. 500. Hence, this appeal by the insurer.

4. Mr. P. Choudhury, the learned counsel for the appellant, canvasses three points before us, namely, (1) that the owner having not been made liable by the Tribunal, the insurer could not be imputed with any liability under the award ; (2) that the award being in lump sum, the Tribunal ought to have fixed it only at such a figure as would earn the claimant an interest of Rs. 80 per month, which was the loss of income suffered by him at the death of his son ; and a sum of Rs. 10,000 would, according to the counsel, be sufficient for the purpose; and (3) that the father alone was not entitled to the entire amount when the mother and brethren of the deceased were alive.

5. Mr. A.S. Bhattacharjee, the learned counsel for the respondents, contends that the appellants are liable under the law; that the amount awarded is meagre so that the principles of lump sum and interest income are not applicable; and that the father being a legal representative is entitled to the award.

6. The first contention of Mr. Chowdhury is untenable. The award says : " In the result, the claimant succeeds in the case and compensation of Rs. 20,000 (rupees twenty thousand) only is awarded in favour of the claimant which will be realised from the insurer, opposite party No. 3, Messrs New India Assurance Co. Ltd., by the contract of indemnity in terms of the insurance policy. Thus, opposite party No. 3, the New India Assurance Co. Ltd., shall be liable to pay the aforesaid awarded amount to the claimant." From the above language, it is clear that the insurer is made liable only by virtue of the indemnifying clause in the insurance contract which means that the insured is primarily liable; and the liability is imputed to the insurer. There is no dispute about the principle that, under the terms of the insurance policy, the insurer is to indemnify the insured against any liability in law incurred by him. The insured having not been exempted from liability, the insurer will be liable to compensate the claimant.

7. As regards the quantum of compensation; it is now well settled that in calculation of compensation in case of fatal accident, the law contemplates two sorts of damages : first, the pecuniary loss to the estate of the deceased resulting from the accident; second, the pecuniary loss sustained by the

members of his family through his death. Action for the latter is brought by the legal representatives, not for the estate but as trustees for the relatives beneficially entitled. The Supreme Court approved in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, the method laid down in *Nance v. British Columbia Electric Railway Co. Ltd.* [1951] AC 601 : [1951] 2 All ER 448 (PC), according to which, (1) the expectation of life of the deceased has to be estimated having regard to his age, health and possibility of premature death by motor accident; (2) the estimated amounts required for the future provision of his dependants, having regard to the amounts he used to spend for the purpose during his lifetime, and other relevant circumstances; (3) the estimated annual sum is multiplied by the number of years of his estimated span of life, so counted as to arrive at the equivalent in the form of lump sum payable at his death ; (4) deductions must be made for the benefit accruing to the dependants from the acceleration of their interest in his estate, if any ; and (5) deductions to be made for the possible eventualities if the deceased had lived his full span of life.

8. Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] AC 601 : [1942] 1 All ER 657 (HL), observed that " the actual pecuniary loss of such individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, of any pecuniary advantage which from whatever source comes to him by reason of the death ".

9. In *Bishan Devi v. Sirbaksh Singh*, the Supreme Court has observed (p. 137 of 51 Comp Cas):

" The insurance companies are now nationalised and the necessity for awarding lump sum payment to secure the interest of the dependants is no longer there. Regular monthly payments could be made through one of the nationalised banks nearest to the place of residence of the dependants. Payment of monthly instalments, and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. Ordinarily, in arriving at the lump sum payable, the court takes the figure at about twelve years" payment. Thus, in the case of monthly compensation of Rs. 250 payable, the lump sum arrived at would be between 30,000 and 35,000. Regular monthly payments of Rs. 250 can be made from the interest of the lump sum alone and the payment will be restricted only for the period of dependency of the several dependants. In most cases it is seen that a lump sum payment is not to the advantage of the dependants as a large part of it is frittered away during litigation and by payment to persons assisting in the litigation. It may also be provided that if the dependants are not satisfied with the minimum compensation payable, they will be at liberty to pursue their remedies before the Motor Accidents Claims Tribunal. "

10. The above is a mode of payment but it does not govern the fixation of the quantum of compensation, which has to be done on settled principles.

11. In the instant case, admittedly the deceased used to contribute Rs. 80-85 per month for the maintenance of the claimant's family. This is not disputed. The deceased was aged 22 years and he used to draw a salary of Rs. 100 per month plus free food and lodging at the relevant time. Calculated on that basis, taking the life span to be 65 years, the amount that would have been earned by him comes to about Rs. 51,600 without taking into consideration the possible increments. If he contributed Rs. 80 per month towards maintenance of the family, the total amount would be about Rs. 41,280. Thirty per cent. or so thereof could have been deducted on account of the payment being in lump sum. The net amount would be about Rs. 28,891. But, in this case, the claim was only for Rs. 20,000 which was far below the amount calculated above. Under such circumstances, the Tribunal was justified in awarding Rs. 20,000. The submission is accordingly rejected.

12. The last submission of Mr. Choudhury is not helpful to the insurer, as was held in *Kasturilal Gopaldas and Another Vs. Prabhakar Martand Patki and Another, Chuharmal Issardas v. Haji Wali Mohammed* [1968] ACJ 391 : [1968] MPLJ 780 and in *Himachal Government Transport v. Joginder Singh* [1970] ACJ 37 the father (as a legal representative) having claimed the amount for the benefit of the family which included the mother and brethren of the deceased. The term "legal representative" in the M. V. Act, 1939 (s. 110A), should take in all persons who could maintain an action under the Legal Representatives' Suits Act or under the Fatal Accidents Act and the term has a wider connotation than u/s 2(11) of the CPC, 1908, as was held in *Perumal v. Ellusamy Reddiar* [1974] ACJ 182 .

13. In the result this appeal is found to be without merit and it is dismissed. It is stated before us that the appellant has already deposited the entire awarded amount and the claimant has already withdrawn half of that amount, the other half being kept deposited in bank by the Tribunal. He shall now be entitled to withdraw that half also including the interest it may have earned, till the date of withdrawal. No order as to costs.

14. Appeal dismissed.

D. Pathak, Actg. C.J.

15. I agree.