
(1971) 11 OHC CK 0015
In the Orissa High Court
Case No : M.A. No. 5 of 1967

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Mrs. Kamal Kamini Das and Others	RESPONDENT

Date of Decision : 19-11-1971

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A
Motor Vehicles Act, 1939 — Section 110, 110A , 110B, 110C , 110CC

Citation : AIR 1973 Ori 33 : (1972) 38 CLT 135

Hon'ble Judges : G.K. Misra, C.J.;S. Acharya, J

Bench : Division Bench

Advocate : R.C. Patnaik and P.K. Sengupta, for the Appellant; S.C. Ray, for the Respondent

Final Decision : Partly Allowed

Judgement

G.K. Misra, C.J.—Publius Machir Das was working as a Missioner in Children's Special Service Mission, Orissa, on a pay of Rs. 293 per month which included his salary, clearness allowance, house-rent, children's allowance etc. His headquarters was at Baptist Church Lane, Berhampur, in the district of Ganjam. He had gone to Rourkela in the district of Sundargarh on tour on 10-10-1963. At about 11-30 a. m. that day while he was going on a cycle, a Mercedes Benz Truck O. R. O. 2022 came at a very high speed and ran over him by rash and negligent driving. He died instantaneously on the spot as a result of the accident. The vehicle had been insured with Oriental Fire & General Insurance Co., Branch Janpath, New Delhi (hereinafter to be referred to as the Company) (Opposite Party No. 3). The date of birth of the deceased was 13th April, 1905 and he was about 58 1/2 years old at the time of death. The ten claimants are the widow, sons and daughters of the deceased. An application for compensation was filed u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter to be referred to as the Act) before the Motor Accidents Claims Tribunal (hereinafter to be referred to as the Tribunal) wherein Rs. 59,772/- was claimed as the amount of compensation. It was stated in the application that the deceased was very healthy and was

expected to survive till his 75th year. The ancestors of the deceased were said to have lived up to the 80th year and the normal expectancy of life in the family of the deceased was not less than the 75th year. The amount of compensation was calculated with an expectancy of life for 17 years more on the basis of Rs. 283/- as the monthly income of the de-ceased. Opposite Parties 1 and 2 were des-called as the owners of the vehicle. Opposite Party No. 1 having purchased the vehicle from Opposite Party No. 2 on hire-purchase system and all the instalments not having been paid by then.

The defence was that the deceased was a workman under the Workmen's Compensation Act and as such the Tribunal had no jurisdiction to entertain the claim. The claim was barred by limitation and the expectancy of life of the deceased cannot be more than 55 years. The monthly income of the declared had been highly exaggerated and the claim was excessive.

Five witnesses were examined on behalf of the petitioners and sons on behalf of the opposite parties. No documents were put in evidence except the post-mortem report and the F. I. R.

2. The Tribunal recorded the following findings:

(i) The deceased was killed by the rash and negligent driving of the driver of O. R. O. 2022;

(ii) The deceased was not a workman and the Workmen's Compensation Act has no application to this case;

(iii) The claim was not barred by limitation;

(iv) The monthly income of the deceased was Rs. 283/-;

(v) The petitioners were entitled to compensation at a round figure of Rs. 40,000/-which is to be paid by S. Karam Singh (Opposite Party No. 1).

The appeal has been filed by Opposite Party No. 3 making the petitioners and Opposite Parties 1 and 2 as respondents.

The first four findings are not assailed in this appeal.

3. Mr. Patnaik challenges the quantum of compensation and the extent of liability of the appellant,

4. The judgment of the learned Tribunal is somewhat superficial and does not refer to the relevant law on the point. It is therefore necessary to first state and analyse the relevant law.

5. Claims Tribunals have been constituted u/s 110 of the Act.

An application for compensation is to be filed u/s 110-A within a period of six months of the occurrence of the accident.

Section 110-B speaks of the award of the Claims Tribunal. It runs thus:--

"Section 110-B. Award of the Claims Tribunals. -- On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

Section 110-C deals with the procedures and powers of Claims Tribunals.

Section 110-CC relates to award of interest where any sum is allowed. It lays down that where any Court or Claims Tribunal allows a claim for compensation made under Chapter VIII, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. This section has been newly added by Act 56 of 1969 with effect from 2-3-1970 and as such is not applicable to this case, the petition for compensation having been filed on 8-12-1963.

Section 110-D provides for appeals. Any person aggrieved by the award may prefer an appeal to the High Court within 90 days from the date of the award.

Section 110-F bars the jurisdiction of the Civil Court. It says that where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

6. The object of this group of Sections 110 to 110-F of the Act is to supply a cheap and expeditious mode of enforcing liability arising out of claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both as referred to in Section 110. Prior to the constitution of the Tribunal, compensation could be claimed by institution of suits for damages only through the medium of the Civil Court on payment of ad valorem court fee. This group of sections furnishes a self-contained Code that the claims can be lodged on the basis of an application without payment of ad valorem court-fee. By providing a direct appeal to the High Court second appeals are also dispensed with. The Tribunal is to follow a summary procedure in determining compensation. Despite a self-contained Code of procedure for adjudication of claims being provided, the sections do not deal with the substantive law regarding determination of liability. They only furnish a new mode of enforcing liability. For determination of liability one has still to look to the substantive law in the law of torts and the Fatal Accidents Act, 1855

(hereinafter to be referred to as the 1855 Act) or at any rate to the principles thereof. Section 110-B merely says that the Tribunal may make an award determining the amount of compensation which appears to it to be just. The objective factors which would constitute the basis of compensation appearing as just have not been indicated in the section. The expression "which appears to it to be just" however vests a wide discretion in the Tribunal in the matter of determination of compensation. Despite the wide amplitude of such power, the determination cannot be arbitrary and must be based on certain data establishing reasonable nexus between the loss incurred and the compensation to be awarded.

7. The burden of proof is undoubtedly on the claimants to establish the necessary ingredients for obtaining compensation (See Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, It is for them to plead and prove that there was an accident involving death arising out of the use of motor vehicles and the loss accruing to them in terms of money value.

8. The substantive law as to how such compensation is to be determined is found in Section 1-A of the 1855 Act. That section may be extracted:

"Section 1-A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong--Whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child if any, of the person whose death shall have been so caused, and shall be brought by and in name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom end for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct".

On analysis of the aforesaid section it is clear that to determine compensation the Tribunal has to first find out the income of the deceased while he was alive. It must further find out as to what portion out of this income he used to contribute or spend for his family.

The claim for compensation shall be only for the benefit of the family members, the representatives of the person deceased. As the contribution by the deceased of a portion of his income for the benefit of his family members could be made only during the life time the expectancy of living of the deceased must be determined. In other words the Tribunal has to find out the span of life of the deceased. This would depend upon various factors such as the age, the bodily health and the possibility of premature determination of his life by later accidents. The 1855 Act is modelled on Fatal Accidents Act as in force in the United Kingdom. A masterly exposition of law is given by Viscount Simon in 1951 AC 601. (*Nance v. British Columbia Electric Rly. Co. Ltd.*). At page 615 his Lordship observed thus:

"it is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was; (let this be "x" years) and next what sums during these x years he would probably have applied to the support of his wife. In fixing x, regard must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident. In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available; though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted. In the present case it is known that in the years 1945-1948 which immediately preceded his death, his "drawings" from his business averaged \$ 2,600 per annum. His wife's maintenance was derived from, and could not have exceeded these drawings. What proportion of such amount he in fact contributed to her support is a matter of guess-work, but both his widow and her sister give him a good character for generosity. He was a "good provider". Supposing, by this method an estimated annual sum of \$ y is arrived at as the sum which would have been applied for the benefit of the plaintiff for x more years, the sum to be awarded is not simply \$ y multiplied by x, because that sum is a sum spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages. Then a deduction must therefore be made for the benefit accruing to the widow from the acceleration of her interest in his estate on his death intestate in 1949 (She came into \$ 6,500 one-third of his estate, x years sooner than she would otherwise have done) and of her interest in sums payable on a policy of \$ 1,000 on his life; and a further allowance must be made for a possibility which might have been realised if he had not been killed but had embarked on his allotted span of x years, namely, the possibility that the wife might have died before he did. And there is a further possibility to be allowed for -- though in most cases it is incapable of evaluation -- namely, the possibility that in the events which have actually happened, the widow might re-marry, in circumstances which would improve her financial position". This decision was approved and followed in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, . The same view has been taken in *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, ; *C.K. Subramania Iyer and*

Others Vs. T. Kunhikuttan Nair and Others, ; Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., & AIR 1967 Orissa 116, (Amulya Patnaik v. State of Orissa). It is not necessary to refer to a large many decisions of the different High Courts in the same line.

9. In this case the factors to be taken into consideration for determining the quantum of compensation are few. There is no evidence that the deceased had estate which his heirs would inherit. The only features relevant for consideration in this case are the income of the deceased while he was alive, his expectancy of living and the portion out of the income which he was spending on account of the claimants. It is not disputed that the monthly income of the deceased was Rs. 283/-. The constituents of this Rs. 283/- were his pay and D. A. of Rs, 195/-, house-rent of Rs. 40/- and children's allowance of Rs. 48/-. House-rent of Rs. 40/- and children's allowance of Rs. 48/- were being definitely spent by the deceased for the members of the family. Out of the paltry amount of Rs. 195/- as pay and D. A. the maximum that the deceased could spend for himself would be estimated at Rs. 90/-. He is to be taken to be spending the balance of Rs. 105/- for the benefit of the claim-ants. Thus, out of the total monthly income of Rs. 283/- the deceased is likely to have been spending Rs. 193/- for the benefit of his family members.

The expectancy of life of the deceased has been estimated at 70 years; the deceased, however, died at the age of 58 1/2 years. Accepting the expected span of life to be 70 years he had a further span of Hi years. During this period he would have contributed Rs. 26,634/- at the rate of Rs. 193/- per month.

10. As has already been discussed, the claimants could not have been entitled to this lump sum if the deceased had been alive. The sum to be awarded is to be spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at the time of death as damages. Ordinarily one-sixth of the total amount is deducted for fixing the lump sum (see 1970 Acc CJ 84 (Punj), Rajinder Kaur v. Union of India), If 1/6th is deducted. Rs. 26,634/- come to Rs. 22,195/-.

The determination of the question of compensation depends upon several imponderables. In making such assessment there is likely to be a margin of error, Taking this margin of error into consideration it would be just if the claimants are awarded a round sum of Rs. 21,000/-as compensation.

11. The next question for consideration is how this liability would be apportioned between the owner respondent No. II and the appellant.

Section 95 (2) of the Act runs thus "95(2). Subject to the proviso to Sub-section (I) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits namely:--

(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, including the liabilities, if any, arising, under the Workmen's Compensation Act,

1923 in respect of the death of, or bodily injury to employees (other than the driver), not exceeding six in number being carried in the vehicle".

It is to be noted that Rs. 20,000/- has now been enhanced to Rs. 50,000/- in Act 56 of 1969. We are however concerned with the limit of Rs. 20,000/- as it was prior to the amendment.

The vehicle being a goods vehicle the liability of the appellant is limited to Rs. 20,000/- u/s 95 (2) (a). The language of Section is clear (see however 1970 Acc CJ 451 AIR 1971 Mad 143 . Jayalakshmi v. Ruby General Ins. Co. Ltd. and Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.,

Out of the compensation of Rupees 21,000/- awarded against the owner S. Karam Singh (respondent No. II) the appellant would pay a sum of Rupees 20,000/-.

12. The last question for consideration is whether the claimants are entitled to any interest on the compensation awarded. As has already been stated. Section 110-CC providing for award of interest where any claim is allowed was incorporated into the statute by Act 56 of 1969 which was to be effective from 2-3-1970. Prior to that there was no statutory provision for awarding interest. The question for consideration is whether in the absence of positive statutory provision interest cannot be awarded. No decision under the Act has been brought to our notice wherein this question was discussed and a conclusion was reached one way or the other. Guidance must, therefore, be sought from decisions under Other statutes where interest was granted on compensation awarded in the absence Of statutory provision. National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India, dealt with a case of grant of compensation under the Life Insurance Corporation Act, 1956. Their Lordships allowed interest even in the absence of statutory provision. They said that the Life Insurance Corporation Act and the Rules made thereunder do not contain any express provisions for grant of interest on the delayed payment of compensation. The principle applicable in respect of such a matter is that on entering possession the purchaser becomes entitled to the rents but if he has not paid the price, interest in equity is deemed payable by him on the purchase price which belongs to the seller. The claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of the right to retain possession.

In this case the claimants have been deprived of the compensation to which they were entitled from the date of the award. If the compensation amount would have been paid forthwith they could have deposited it in the bank and could have secured interest or could have utilised it much more usefully. Applying the principles of natural justice, there is, therefore, no reason why they should be deprived of interest. Similar view was taken in Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, and Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., where interest was awarded under the Arbitration Act even in

the absence of any specific provision. The same view was also taken by this Court in (1971) 2 Cut WR 524, (State of Orissa v. Govinda Choudhury).

On the aforesaid analysis we are satisfied that the claimants are entitled to interest. In view of the fact that they made a fabulous claim which has been almost reduced to half and for that reason the litigation was unnecessarily protracted, we would allow interest at 6% per annum from the date the award was made by the Tribunal as was done in Vinod Kumar Shrivastava Vs. Ved Mitra Vohra and Others, .

13. To sum up-

(i) The claimants are entitled to a compensation of Rs. 21,000/- out of which the appellant is liable to pay Rs. 20,000/-

(ii) The compensation is payable with interest at 6 per cent per annum with effect from 15-10-1966 when the award was made by the Tribunal.

14. In the result the appeal is allowed in part as indicated above. As success is partial, parties are to bear their own costs.

Acharya, J.

15. I agree.