
(2005) 02 GAU CK 0078

In the Gauhati High Court

Case No : M.A.C. App. No. 57 of 1999 and C.R.P. No. 49 of 1999

Oriental Insurance Co. Ltd. and Another

APPELLANT

Vs

Josua Halam and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Motor Vehicles Act, 1988 — Section 149(2), 163A, 166, 170, 173

Citation : (2005) 4 ACC 611 : (2007) ACJ 228 : (2005) 2 GLR 630

Hon'ble Judges : T. Vaiphei, J;A.B. Pal, J

Bench : Division Bench

Advocate : P. Gautam, S. Dutta and M. Choudhury, for the Appellant; P. Roy Barman and B. Saha, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—A boy named Albert Hallam, aged only 4 years 8 months and 21 days was knocked to death by a truck bearing No. AXA-5845 on 22.11.1995 when he went to shop on Assam-Agartala Road for buying a pen. The accident had taken place on the road when he was returning home. His parents Josua Hallam and Smti Aruna Hallam instituted the claim case for an amount of Rs. 6,32,000, which was disposed of by the Tribunal awarding an amount of Rs. 3,86,000 by the impugned judgment and award dated 7.7.1999 in T.S. (MACT) 28 of 1995. The Oriental Insurance Company Ltd. and Shri Gangaram Verma being the insurer and owner of the vehicle respectively preferred appeals u/s 173 of the Motor Vehicles Act, 1988 and a revision petition under Article 227 of the Constitution against the said judgment and award and both the cases are taken up together for disposal by a single judgment.

2. The appeal as well as the revision petition are directed against the amount of compensation, which was considered by the appellants/petitioners as unreasonably hefty considering the age of the deceased child. Referring to the decision reported in 1994 (2) TAC 169, where an amount of Rs. 1,50,000 was

awarded for the death of a boy, aged 20 years and the decision of this court in M.A.(F) 153 of 1992 and M.A.(F) 62 of 1993 awarding a compensation of Rs. 50,000 for the death of a boy studying in Class-X, the insurer and the insured objected to the abnormally high amount of compensation.

3. By the impugned judgment, the Tribunal while awarding an amount of Rs. 3,86,000 had drawn certain inference from his own experience after considering that the grandfather of the victim was a Sheristader in the court of Additional District Judge and the father of the victim was a Village Level Worker under the Department of Agriculture. The deceased boy was a student of English Medium School and, therefore, the Tribunal held that the boy had the prospect atleast of becoming a Group-D employee and thereby earning an amount of Rs. 3,200 per month. He, thus, calculated the annual loss multiplying Rs. 3,200 by 12 and then by 15 (being the multiplier) and thus the total amount came to Rs. 5,76,000. Deducting 1/3 of the amount towards personal expenses, he finally downed the amount to Rs. 3,84,000 to which he added Rs. 2,000 as funeral expenses. Thus, the total amount of compensation came to Rs. 3,86,000. Along with this amount, the Tribunal also awarded interest @10% per annum. Against this method of calculation as well as the rate of interest, the present appeal and revision petition have been filed.

4. We have heard Mr. P. Gautam, learned counsel for the appellants/petitioners and Mr. P. Roy Barman, learned counsel for the claimant-respondents.

5. Mr. Gautam submits that it may be the first case where the Tribunal disregarding all established method and procedure of calculating compensation, particularly the guidelines formulated in the Second Schedule of the M.V. Act, 1988, invented his own method of calculation by imagining that the boy of 4 years old if survived would have earned Rs. 3,200 per month and deducting 1/3, the rest would have been the loss of dependency for the parents. As the method of calculation is absurd and arbitrary, the appellants/petitioners filed the appeal and the revision petition seeking interference of this court.

6. Mr. Roy Barman, on the other hand argued that though the amount may appear to be on the higher side but the appellant/petitioner No. 1 being the insurer is not competent to file an appeal or revision challenging the amount of compensation in view of the provision of Section 149(2) of the M.V. Act, which restricts the grounds on which only an insurer can challenge the award. He further submits that the joint appeal and the revision petition by the insurer and the insured are not legally maintainable and so, this court sitting either in appeal or revision cannot entertain the challenges against the judgment and the award.

7. The short question we are, therefore, called upon to decide is whether the joint appeal or revision by the insurer and the insured is maintainable in law and whether the method of calculation adopted by the Tribunal was wrong, arbitrary, perverse and exorbitant.

8. As regards the first issue regarding maintainability of the joint appeal or

revision, the Apex Court had the occasion to address a similar situation in H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, which has been relied on by Mr. Gautam. Discussing several decisions on the issue, the Apex Court made path-breaking observations, which are noted below for appreciation of the present controversy: -

"Ultimately, the Court found that even in the case of a joint appeal by the insurer and the insured if an award has been made against the tortfeasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the, appeal after the cause title is Suitably amended by deleting the name of the insurer. Even though this Court held that the appeal of the insured could proceed on merit and could not have been dismissed merely because the insurer joined therein, as it did not find any ground to interfere with the quantum of compensation on merit, the order of the High Court was not upset. In United India Insurance Co. Ltd. which was a case under the Act against the order awarding compensation, no appeal was preferred by the insured but only the insurer filed petition under Article 227 of the Constitution of India before the High Court. During the pendency of the said petition, a motion was made for the stay of execution of the award but the High Court had only chosen to issue notice to show cause why the revision petition be not entertained. Against the said order, when the matter was brought to this Court, it was directed that the petition under Article 227 of the Constitution filed by the insurer should be treated to be an appeal u/s 173 of the Act. The Court relied upon the provisions of Section 170 of the Act which lays down that where in the course of inquiry, the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. This Court laid down that if the insured failed to prefer any appeal against the award of the Tribunal, that would also amount to failure to contest the claim within the meaning of Section 170 of the Act. Therefore, the decisions of this Court in the cases of Narendra Kumar and Chinnama George were distinguished on facts. That apart, the case of Chinnama George is otherwise also distinguishable as in that case, on behalf of the insured, no argument was addressed whereas the appeal was argued only on behalf of the insurer. That apart, the provisions of Section 170 of the Act which have been taken notice of in the case of United India Insurance Co. Ltd. were not considered therein. In the present case, appeal was whole hog pressed on behalf of the insured challenging the quantum of compensation awarded by the Tribunal. Thus, the decision of this Court in the case of Chinnama George can be of no avail to the appellant and we do not find any merit in the submission that

joint appeal by the insurer as well as the insured was not maintainable. In such an eventuality, the course which a court should adopt is as noticed in the case of Narendra Kumar to delete the name of the insurer from the cause title and proceed with the appeal of the insured and decide the same on merit."

9. In the case in our hand, both the appeals and the revision were whole hog presented by the insurer as well as the insured though no argument was presented by the insured. We are, however, of the view that the factual situation of this case is squarely covered by the ratio in United India Insurance Co. Ltd. and as such the present appeal and the revision petition are maintainable in law.

10. Learned counsel for the respondents submitted that this court would not be justified to interfere with the findings of the Tribunal about the prospective contribution of the boy to his parents had he been alive. In order to bolster his stand to justify the quantum of compensation, he relied on the decision of the Supreme Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, In that case, the son of the plaintiffs, aged about 8 years died in a motor accident. On the issue regarding correct method of calculation of compensation, the Apex Court made significant observation in para 13 of the judgment, the relevant portion of which is quoted below: -

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration.

Since this important observation in 1969, the legal fraternity has waited long for a concrete guideline in assessing the damages while excluding all considerations of matters, which rest in speculation or fancy and the long wait ended when in Second Schedule to the M.V. Act a structured formula was formulated. Though the formula is meant to apply only in cases covered by Section 163A of the Act, it undoubtedly provides guidelines for making reasonably correct assessment without depending much on any sort of speculation or fancy in assessing the compensation against the claim u/s 166 of the Act. The father of the deceased Josua Hallam deposed before the Tribunal, where his age has been recorded as 39 years. Therefore, the Tribunal should have taken 16 as the correct multiplier following the guidelines given in the Second Schedule. Again, when the boy had no income at all, the notional income of Rs. 15,000 per annum should have been the basis for the purpose. Deducting 3 from that amount, Rs. 10,000 could be the annual income which being multiplied by 16, the amount of compensation could Rs. 1,60,000 only.

11. Mr. Roy Barman referred to a decision of the Gujarat High Court in

Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, , in which a boy aged 6 years died in motor accident. A claim case was filed both u/s 166 and u/s 163A of the M.V. Act. The Tribunal decided the claim on the basis of the Second Schedule presuming the income of the deceased at Rs. 15,000 per annum and multiplying it by 15. The High Court did not interfere with the same, but kept open to the Tribunal to decide the application u/s 166 of the Act, which was pending before it qua the heads other than those provided in the Second Schedule. In the facts and circumstances of the present case, as discussed above, we do not find it to be a fit case for application in the present one as there is only one claim petition u/s 166 of the M.V. Act and we have only interfered with the method of calculation by applying the structured formula given in the Second Schedule of the said Act.

12. In the result, the appeal and the revision petition are allowed in part and the judgment and award of the Tribunal are modified awarding Rs. 1,60,000 as per calculation made in para 10 and another conventional amount of Rs. 5,000 making the total award to Rs. 1,65,000. We, however, do not interfere with the rate of interest as awarded by the Tribunal.

No cost.