
(2008) 02 J&K CK 0027
In the Jammu And Kashmir High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Indu Puri and Others		RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Employees Compensation Act, 1923 — Section 4A
Motor Vehicles Act, 1988 — Section 168, 171

Citation : (2008) ACJ 2753

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Judgement

J.P. Singh, J.—Ashok Puri was travelling along with Surinder Kumar Waza, Amrik Singh, Raj Nath Nehru, Bhupinder Kumar and Amar

Nath in a motor vehicle Tata Sumo No. JK 02-J 4985 on 2.12.1998, when it met with an accident at Vessu Nursery, Qazigund, Kashmir. The

widow, minor son, minor daughter and mother of Ashok Puri, filed a compensation claim of Rs. 20,00,000 for the death of Ashok Puri, with

Motor Accidents Claims Tribunal, Jammu.

2. Assessing the monthly income of the deceased at Rs. 15,000, monthly economic loss to the family at Rs. 10,250 and applying 14 as against 16,

the prescribed multiplier in the Second Schedule to the Motor Vehicles Act, 1988, loss of dependency of the family on the income of the deceased

was determined by the Claims Tribunal at Rs. 17,22,000. Adding Rs. 15,000 as loss of consortium, Rs. 15,000 for loss to estate and Rs. 5,000

towards funeral expenses, the Claims Tribunal awarded an amount of Rs. 17,57,000 as compensation to the claimants for the death of Ashok Puri.

3. Aggrieved by the award of the Tribunal the appellant insurance company has

come up in appeal to this Court. I have heard learned Counsel for the parties.

4. Learned Counsel for the appellant has not questioned the findings of the Tribunal insofar as it assesses the monthly income of the deceased at the time of his death. All that the learned Counsel says in questioning the findings of the Tribunal on this issue is that the Tribunal had erred in taking into consideration the prospective promotional income of the deceased, because neither had the claimants set up any such case of prospective promotional income in their pleadings nor was any evidence led by them in this behalf during the currency of the inquiry before Tribunal. He, therefore, says that finding of the Tribunal assessing Rs. 15,000 as the monthly income of the deceased is not sustainable. His further case is that the Tribunal had not applied the multiplier method of assessing compensation in its entirety and had thereby erred in assessing compensation which may be just compensation in terms of section 168 of the Motor Vehicles Act. Learned Counsel lastly contended that the interest awarded by the Tribunal was on higher side which was required to be suitably reduced.

5. Learned Counsel for the claimants, on the other hand, justified the award saying that the Tribunal had not committed any error in taking judicial notice of the promotional benefits which every bank employee was entitled to. He submitted that the rate of interest awarded by the Tribunal was in tune with the law laid down by Hon'ble Supreme Court of India.

6. I have considered the submissions made at the Bar and gone through the pleadings of the parties.

7. Claimants had not, by way of requisite pleadings set up any such case in their claim petition regarding the promotional prospects of the deceased. There are only vague allegations in the petition towards promotional prospects of the deceased. No worthwhile evidence too has been led by them to justify the award of the Tribunal when it takes into consideration the prospective income of the deceased and that too without any justifiable basis therefor.

9. Support in this behalf may be had from *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, where, while dealing with the question Hon'ble Supreme Court of India had held as follows:

(8) To appreciate the respective contentions of learned Counsel for the parties, we have gone through the relevant material on record. It is by now well settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life to determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending upon the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a 'multiplier'. The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. In the present case, earning of the deceased and consequently the amount which he was spending over the members of his family, i.e., dependency is to be worked out on the basis of the earnings of the deceased at the time of the accident. The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000 to Rs. 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the M.A.C.T. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. It is stated that the deceased was about 24 years at the time of the accident. The M.A.C.T. has accepted Rs. 4,000 per month, as the earnings of the deceased and after deducting Rs. 400 per month for his pocket expenses, the remaining amount of Rs. 3,600 has been divided into three equal shares, out of which two shares, i.e., Rs. 2,400 per month or Rs. 28,800 per annum (wrongly mentioned as Rs. 28,000 in the award), were assessed as loss to both the claimants, who were the parents of the deceased. The ages of the claimants are stated to be

between 45 and 50 years and accordingly multiplier of 12 was applied. Thus, a sum of Rs. 28,800 x 12 = Rs. 3,45,600 was awarded as

compensation. In addition thereto, a sum of Rs. 2,000 has been given for funeral expenses and a further amount of Rs. 6,000 under the head 'loss

to estate'. The total sum awardable is Rs. 3,53,600 but since the deceased was held liable for contributory negligence, the liability of the insurer

with whom the bus in question was insured is fixed at 50 per cent, i.e., to the extent of Rs. 1,76,800 with interest at the rate of 10 per cent per

annum from the date of filing of the claim application till the date of payment. The deceased, a young boy of 24 years, was unmarried and the

claimants were his father and mother, the dependency has to be calculated on the basis that within two or three years the deceased would have

married and raised family and the monthly allowance he was giving to his parents would have been cut down. Thus, in our view, the M.A.C.T. has

awarded just and reasonable compensation to the claimants.

10. The plea of the claimants that judicial notice was required to be taken regarding the promotional prospects of bank employees, cannot be

sustained, in view of the law settled by the Apex Court in this respect.

11. In view of law laid down by the Hon'ble Apex Court of India, the finding of the Tribunal in assessing the income of the deceased at Rs.

15,000, without there being any evidence in support of the plea of promotional prospects of the deceased, therefore, becomes unwarranted.

12. Although the claimants had failed to prove about the promotional prospects of the deceased, yet the evidence produced by them, i.e., PW

Jugal Kishore Uppadhyaya and the income tax returns in support thereof, sufficiently prove the income of the deceased at Rs. 10,000 per month.

This finding of the Tribunal, has not been questioned by learned Counsel for the appellant and rightly so because they had not led any evidence in

this behalf to controvert the evidence produced by claimants proving the income of the deceased at Rs. 10,000 per month.

13. Accordingly, modifying the finding of the Tribunal on the issue, the income of the deceased Ashok Puri at the time of his death is accordingly

assessed at Rs. 10,000 per month.

14. Coming to the next contention of learned Counsel for the appellant regarding the omission of the Tribunal to adopt the multiplier method for

assessing compensation, suffice it would be to say that the law regarding adopting of multiplier method for assessment of compensation in motor vehicular accidents, is, by now, well settled and for assessment of just compensation, in terms of section 168 of the Motor Vehicles Act, multiplier method has been recognised by the Apex Court as the accepted method of determining just compensation. It was held by Hon'ble Supreme Court of India in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , that the multiplier method must be treated as an accepted method of determining and ensuring payment of just compensation because it is this method which brings uniformity and certainty to awards made all over the country. It has further been held that ordinarily the payment of compensation on the basis of structured formula, as provided under the Second Schedule to the Motor Vehicles Act, should not be ordinarily deviated from.

15. In view of the judgments of Hon'ble Supreme Court of India, deviation by the Tribunal in not deducting 1/3rd out of the assessed income of the deceased for assessing the monthly loss to the family cannot be justified. The unitary method adopted by the Tribunal in making deductions from the income of the deceased is thus disapproved.

16. Deducting 1/3rd out of the assessed income of the deceased, the monthly dependency of the family on the income of the deceased would come to Rs. 6,667 and hence the annual dependency would be Rs. 80,004. Multiplying annual dependency of Rs. 80,004 with selected multiplier of 14, the multiplicand (sic compensation) would come to Rs. 11,20,056. Adding the conventional sum of Rs. 25,000 on account of loss to the estate and consortium and an amount of Rs. 5,000 for funeral expenses of the deceased, the total compensation payable to the claimants would come to Rs. 11,50,056.

17. The interest awarded by the Claims Tribunal at the rate of 9 per cent, however, appears to be excessive in view of law laid down by Hon'ble Supreme Court of India in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , where their Lordships had held as follows:

(18) Three decisions were cited before us by Mr. A.P. Mohanty, learned Counsel

appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable, depending upon the facts and circumstances of each case and taking all the relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life, etc., into consideration. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Apex Court. Interest can be granted even if claimant does not specifically plead for the same as it is consequential in the eyes of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of one which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision u/s 171, giving discretion to the Tribunal in such matters. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither section 34 of CPC nor section 4-A(3) of Workmen's Compensation Act are applicable in the matter of fixing the rate of interest in a claim under the Motor Vehicles Act. The courts have awarded interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard and fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above.

18. In view of the above extracted legal position, the trend noticed in latest judgments of Hon'ble Supreme Court of India in awarding interest and keeping in view the facts and circumstances of the present case, I am of the view that the interest awarded by the Tribunal is on higher side and needs to be scaled down to 7.5 per cent per annum from the date of filing of the claim petition till realisation of the compensation amount.

19. The findings of the Claims Tribunal on issue No. 2 are accordingly modified to the extent indicated above. The award of compensation made

by the Tribunal in favour of the claimants is, accordingly, modified to be an award for an amount of Rs. 11,50,056 along with interest at the rate of

7.5 per cent per annum from the date of filing of the claim petition till its realisation. Rest of the terms of the award shall remain same.

20. This appeal is, accordingly, disposed of.