
(1994) 04 MP CK 0003
In the Madhya Pradesh High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Mst. Chhotibai and Others		RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2)(a)

Citation : (1994) 2 ACC 615

Hon'ble Judges : T.S. Drobja, J;S.K. Chawla, J

Bench : Division Bench

Judgement

S.K. Chawla, J.—In support of this appeal by the Insurance Company seeking reduction of the amount of award, it was contended that the monthly income of deceased Deendayal, who was a worker in permanent employ of J.C. Mills at Gwalior, was only the Rs. 906.40 per month as per income certificate Ex. P. 3, and not Rs. 1200/- or 1300/- as wrongly assessed by the Claims Tribunal. Even so, the prospects of advancement in future career also needed to be taken into consideration arriving at the figure of income of the deceased. See General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs) and Ors. in (1994) 2 SCC 176. There was evidence that had the deceased been alive, he would have got like other permanent workers, monthly salary of Rs. 2,000/- per month on the date of the evidence adduced in the case. No exception can, therefore, be taken, the monthly income of the deceased was assessed at Rs. 1200/- or 1300/- and deducting nearly 1/3rd as living expenses of the deceased, in estimating the loss of monthly dependency to be Rs. 800/- or Rs. 9600/- on annual basis.

2. It was further contended in support of the appeal that a lower multiplier of 12 should have been chosen instead of 16, as was done by the Tribunal. On the other hand, in support of the cross objection filed by the claimants claiming enhancement of compensation to the extent of Rs. 3,60,000/-. it was contended by learned Counsel for the claimants/respondents that proper multiplier that should have been chosen should have been 24. Certain decisions were cited from

both the sides to support their contention with respect to the multiplier. It is not necessary to refer to those decisions. They are decisions being instances of particular awards in individual cases. The latest decision of the Supreme Court in the case of *Susama Thomas (supra)* is specifically on the point of multiplier, wherein notice has been taken of the practice of the English Courts, according to which the multiplier does not ordinarily exceed 16 as the maximum. There is also a D.B. decision of the High Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, laying down that if the deceased was in his 20s the proper multiplier should be 16 while if the deceased was between 30s and 40s the proper multiplier should be 15. In the present case, the deceased was in his 30s at the time of the fatal accident. We do not think that the multiplier of 16 taken by the Claims Tribunal was either too low or too high to need interference.

3. The above discussion disposes of the appeal. This brings us to the cross objection filed by the claimants claiming enhancement, as already indicated, of Rs. 3,60,000/-. We are not inclined to enhance, for reasons already given, the figure of the multiplier. But apart from the compensation on account of loss of dependency, the claimants, including the widow of the deceased, were entitled to compensation for loss of the estate as also for loss of consortium confined to the widow. In the case of *Susamma Thomas (supra)* the Supreme Court awarded sums of Rs. 15,000/- each towards loss of the estate and loss of consortium. We find it just and proper to award Rs. 15,000/- to the claimants for loss of the estate of the deceased and Rs. 15,000/- in place of Rs. 2,000/- awarded by the Tribunal, for loss of consortium in the case of claimant/widow of the deceased.

4. The learned Tribunal deducted a sum of Rs. 10,500/-, said to have been received by the widow of the deceased as *ex gratia* payment. There was no evidence that the said payment was made because it was a condition of the contract of the service and was payable only on the death of the employee. There was nothing in the evidence to negative the position that the payment was on charitable grounds "on the occasion of the death" and not an advantage, "by reason of the death". The Tribunal was, therefore, in error in deducting the said amount of *ex gratia* payment from the amount of compensation. This would increase the compensation awarded, by the amount of *ex gratia* payment of Rs. 10,500/-.

5. The aforesaid enhancements would take the figure of the award in excess of Rs. 1,50,000/-. Learned Counsel for the appellant/Insurance Company argued that the liability of the Insurance Company was restricted to Rs. 1,50,000/- vide Section 95(2)(a) of the Motor Vehicles Act, 1939. Suffice to say that Section 95 only laid down the statutory requirements of a policy and the provisions of that Section did not prohibit converting of a risk of higher amount. We find that in the present case in policy, Ex. D-1 the term in the policy defining the limits of liability of the Insurance Company reads that the company's liability u/s II-1(i) in respect of one accident shall be "such amount as is necessary to meet the

requirements of the Motor Vehicles Act, 1939". The expression "such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939" cannot be read as requirements of Section 95 only and the expression covers the entire liability of the owner if incurred under the provisions of M.V. Act, 1939. Had there been intention to limit the liability of the Insurance Company to limits given in Section 95, there was nothing to prevent the use of the words Section 95 or the mention of the sum of Rs. 1,50,000/- in the above term. But the expression used was "such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939". The award for the entire sum of the compensation having been given under the provisions of the Motor Vehicles Act, 1939, the above expression would mean that the Insurance Company agreed to indemnify for the entire sum, liability whereof was incurred by the owner/insured under the provisions of the Motor Vehicles Act, 1939. The decisions in *New India Assurance Co. Ltd v. Nanak Chand Ben and Ors.* in 1989 ACJ 169 (M.P.), *New India Assurance Co. Ltd. v. Ramkumar* in 1990 MPLJ 400 and *Anupama v. Laxman Rao* in 1988 M.P.L.J. 526 lend support of this view. We over-rule the objection of the Insurance Company that its liability was only limited to the extent of Rs. 1,50,000/-. On the other hand, we hold that the Insurance Company is fully liable to indemnify for the entire compensation.

6. In the result, the appeal is dismissed. The cross objection is partly allowed. The award given by the Claims Tribunal in Claim Case No. 10/81 of Motor Accident Claims Tribunal, Gwalior is enhanced by a sum of Rs. 38,500/- (Rupees thirty eight thousand five hundred) from Rs. 1,30,300/- (Rupees one lac thirty thousand three hundred) to Rs. 1,68,800/-). (Rupees one lac sixty eight thousand eight hundred). The claimants shall be entitled to the said enhanced sum with interest at the rate of 12% (twelve percent) per annum from the date of the claim petition till realisation. Respondents Nos. 5 and 6 Chelaram and Durgesh, respectively and the appellant/Insurance Company. (The Oriental Insurance Company, Ltd.) are no doubt jointly and severally liable for the amount of the award but we direct that the entire amount of the award shall be paid by the appellant/Insurance Company. The other directions given in the award of the Claims Tribunal are maintained. The appellant shall pay the costs and the claimants/respondents 1 to 4, which we quantify at Rs. 500/- (Rupees five hundred).