
(2011) 07 SC CK 0124

In the Supreme Court Of India

Case No : Civil Appeal No. 4948 of 2011 (Arising out of S.L.P. (C) No. 15480 of 2010)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Vithabai and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2011) ACJ 2004 : AIR 2011 SC 2838 : (2011) AIRSCW 4235 : (2011) 4 AWC 3945 : (2011) 3 JKJ 87 : (2011) 7 JT 89 : (2012) 1 KarLJ 177 : (2011) 164 PLR 123 : (2011) 3 RCR(Civil) 728 : (2011) 4 RLW 3430 : (2011) 7 SCALE 1 : (2011) 5 Supreme 319 : (2011) 3 TAC

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : P.K. Seth and Manjeet Chawla, for the Appellant;

Final Decision : Partly Allowed

Judgement

Anil R. Dave, J.—Though served, none appeared for the Respondents.

2. Leave granted.

3. The Appellant - Insurance Company has challenged the validity of the judgment dated 1st July, 2009 delivered by the Karnataka High Court, Circuit Bench at Gulbarga in MFA No. 30178 of 2009.

4. By virtue of the impugned judgment, the Respondents-claimants, who had filed MVC No. 359 of 2006 before the Motor Accident Claims Tribunal, Bidar have been awarded higher amount of compensation. Being aggrieved by the enhancement of compensation, the insurance company has filed the appeal.

5. The Tribunal was pleased to award Rs. 1,76,000/- by way of compensation with interest thereon @ 6% to the claimants - the widow and children of Vithal who had died in a motor accident. After considering the evidence adduced before the Tribunal, the Tribunal had come to a conclusion that average income of the

deceased was Rs. 5,000/- per month. On the basis of the said income and looking to the relevant factors, including age of the deceased which was 56 years, the Tribunal had considered multiplier of '8' for determining the amount of compensation. The Tribunal had also considered the fact that the deceased was riding his cycle in the centre of the road and, therefore, he was also held to be negligent to the extent of 50%.

6. An appeal was filed before the High Court by the claimants and after hearing the concerned advocates and looking to the facts of the case, the High Court enhanced the amount of compensation to Rs. 4,86,000/-. The High Court enhanced the compensation because it found that there was no evidence with regard to contributory negligence of the deceased and, therefore, the amount of compensation should not have been reduced. Moreover, the High Court increased the multiplier from '8' to '11', as the age of the deceased was 56 years, by relying upon the judgment delivered in the case of Gulam Khader v. United India Insurance Ltd. reported in 2001 (1) KLJ 340.

7. The learned Counsel appearing for the Appellant-insurance company vehemently submitted that the High Court was in error while increasing the multiplier to '11' from '8'. She submitted that the High Court did not consider the law laid down in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and the multiplier used in the Second Schedule to the Motor Vehicles Act. She also submitted that in view of the judgment delivered in the case of Sarla Verma (supra), the High Court was in error in considering the law laid down by the Karnataka High Court in the case of Gulam Khader (Supra). She further submitted that looking to the age of the deceased, the multiplier, as per the aforesaid schedule should have been '8' and, therefore, the Tribunal had not committed any error in using '8' as a multiplier. In view of the said fact, the High Court ought not to have increased the multiplier to '11'.

8. After considering the submission made by the learned Counsel and looking to the law laid down by this Court and in view of the fact that the age of the deceased was 56 and, therefore, taking notice of the multiplier indicated in the Second Schedule of Motor Vehicles Act, we are of the view that the High Court was not justified in increasing the multiplier from '8' to '11'. In our opinion, the Tribunal was right while considering '8' as a multiplier. We do not find any other error in the judgment delivered by the High Court and, therefore, we are of the view that instead of '11', the multiplier of '8' should be used while calculating the amount of compensation. In view of the said fact, a sum of Rs. 1,20,000/- shall be reduced on account of reduction in multiplier. While considering '11' as the multiplier, the High Court had determined the amount of compensation towards loss of dependency as Rs. 4,40,000/- which is hereby reduced to Rs. 3,20,000/as multiplier has been reduced from '11' to '8'.

9. Except the above modification, no other interference is required in the impugned judgment. Accordingly, the amount of compensation shall be recalculated and paid to the Respondents-claimants with interest as directed by

the Tribunal. The direction, as regards the depositing of the amount with a nationalized bank, shall continue.

10. The appeal is partly allowed to the above extent but without any order as to costs.