

(2019) 05 GAU CK 0078

In the Gauhati High Court

Case No : Motor Accident Appeal No. 21 Of 2016, Interlocutory Application No. 278Of 2016

Oriental Insurance Company Ltd

APPELLANT

Vs

Bela Shah And 4 Ors

RESPONDENT

Date of Decision : 21-05-2019

Acts Referred:

Citation : (2019) 05 GAU CK 0078

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : R D Mozumdar, P Baruah, C Mozumdar

Final Decision : Disposed Off

Judgement

1. Heard Ms. R.D. Mozumdar, the learned counsel for the appellant as well as Ms. P. Baruah, the learned counsel for the respondent Nos. 1 and 2. None appears for the respondent No. 3 though Mr. B. Bhagabati, the learned counsel appeared for the said respondent on 05.03.2019. None appears for the respondent No. 4 despite notice. The names of the respondent Nos. 5, 7 and 8 have already been struck off vide order dated 05.03.2019. Mr. K.K. Bhatta, the learned counsel appears for the respondent No. 6.

2. This is an appeal directed against the judgment dated 11.08.2015 passed by the learned Additional District Judge No. 3, Kamrup (M), Guwahati in MAC Case No. 651/2008, which was originally registered as MAC Case No. 999/2007. The appellant before this Court is the Oriental Insurance Company Limited who was arrayed as opposite party No. 2 before the Tribunal. By the impugned judgment, the learned Tribunal has awarded a sum of Rs. 50,00,960/- alongwith the interest at the rate of 6% per annum from the date of filing of the claim till payment as compensation to the respondent Nos. 1, 2 and 3/claimants. The awarded sum is to be paid by the appellant Insurance Company and the New India Assurance Company Limited which was arrayed as opposite party No. 5 before the Tribunal in equal shares i.e. 50:50. The Tribunal vide the impugned

judgment and award directed the payment of 50% of the awarded amount to the wife of the deceased/claimant No. 1 and the remaining 50% of the awarded amount be equally divided and given to the claimant No. 2 and claimant No. 3, who are the son and the mother of the deceased respectively.

3. Referring to the grounds of appeal, Ms. R.D. Mozumdar, the learned counsel submits that the learned Tribunal committed an error by taking to consideration the transportation allowance, other allowances and professional taxes to calculate the monthly income of the deceased for computing the loss of dependency. She submits that by adding together the amount provided under the three heads, a total sum of Rs. 16,400/- has to be deducted from his monthly income. As a result, the monthly income of the deceased will be Rs. 10,105/- only and calculation of the compensation should be made accordingly. In support of her submissions, the learned counsel refers to the case of National Insurance Company Limited Vs. Indira Srivastava & Ors. reported in (2008) 2 SCC 763 and the Andhra Pradesh High Court judgment in S. Narayanamma Vs. Secretary to Govt. of India reported in (2002) ACJ 2042. She therefore submits that the deduction as mentioned herein above should be made to calculate the dependency of the claimants.

4. Ms. R.D. Mozumdar further submits that the learned Tribunal also committed an error in awarding compensation towards the conventional heads excessively. She submits that the amount which can be given towards the conventional heads such as funeral expenses, loss of consortium and loss of estate has been fixed by the Constitution Bench of the Apex Court in National Insurance Company Limited Vs. Pranay Shetti and Ors. reported in (2017) 16 SCC 680 as Rs. 15,000/-, 40,000/- and Rs. 15,000/- respectively. She therefore submits that only a total amount of Rs. 70,000/- can be awarded to the claimant towards the conventional heads. She thus submits that the judgment and award of the Tribunal may be suitably modified. She also submits that the appellant has already deposited an amount of Rs. 12,50,240/- i.e. 50% of their liability as awarded by the Tribunal before the Registry of this Court. Therefore, the amount that is left to be paid to the claimants will be less the amount already deposited and also without calculation of interest on the deposited amount.

5. Per contra, the learned counsel Ms. P. Baruah appearing for the respondent Nos. 1 and 2 submits that in view of the Apex Court decision in Indira Srivastava & Ors. (supra), the amount received by the deceased towards travelling allowance i.e. 8,000/- per month can be deducted for computing the dependency of the claimants. However, since there is no explanation and definition of other allowances wherein a sum of Rs. 8,200/- was given to the deceased, the same may not be deducted and moreover, as the Tribunal has already deducted 1/3rd of the monthly income towards the personal expenses of the deceased. As for the conventional heads, she submits that since the law has been settled by the Apex Court in Pranay Shetti and Ors. (supra) she has nothing to say in this regard. Ms. P. Baruah, the learned counsel also submits that the ground taken by

the appellant that transportation allowances and other allowances should be deducted from the monthly income of the deceased was not raised before the Tribunal and the same is raised in the present appeal for the first time.

6. Mr. K. K. Bhatta, the learned counsel appearing for the respondent No. 6 submits that he supports and adopts the arguments made by the learned counsel for the appellant since the respondent No. 6 has been fastened the liability of paying 50% of the awarded amount to the claimant. He also submits that instead of 50%, 40% only has to be added towards the future prospect of the deceased since he was not a Government employee.

7. I have heard the learned counsels for the rival parties and perused the materials available on records including the LCR requisitioned from the Tribunal.

8. As may be noticed the main grounds for filing the appeal is that the Tribunal could not have calculated the compensation payable to the claimants by taking into consideration the travelling allowance and other allowances including the tax deductible from the monthly salary of the deceased. The Apex Court in the case of Indira Srivastava & Ors. by relying upon the decision of the Andhra Pradesh High Court S. Narayanamma (supra) held that allowances such as travelling allowance, allowance for newspaper/periodicals, telephone, servant, club fee, car maintenance etc., by virtue of vocation need cannot be included in the salary while computing the net earnings of the deceased. Therefore, following the ratio laid down by the Apex Court the transportation allowance of Rs. 8,000/- will only be deductible from the monthly salary of the deceased. In so far as other allowance of Rs. 8,200/- as indicated in the breakup of the monthly salary of the deceased as per Exhibit-4 is concerned, there is no specific detail of the allowance. However, even in the absence of such definition, it will have to be assumed that the allowance is personal to the deceased and not beneficial for the entire family. As such, the same will have to be deducted from the monthly salary of the deceased.

9. In the result, a sum of Rs. 16,200/- will have to be deducted from the monthly income of the deceased i.e. $26,505 - 16,200 = 10,305/-$. The deceased being 36 years of age at the time of his death, 50% of his income is to be added has future prospect therefore, the monthly income of the deceased will be $Rs. 10,305 + 5152 = 15,457/-$ (rounded) and his annual income will be $15,457 \times 12 = 1,85,484/-$. Thus, taking the above income of the deceased, the annual loss of dependency after deducting the 1/3rd of his income will be $1,23,656/-$. The same if multiplied by the relevant multiplier of 15 will come to Rs. 18,54,840/-. The conventional amount as per the case of Pranay Shetti and Ors. will be Rs. 70,000/- i.e; towards loss of dependency loss of estate and funeral expenses in total. Thus, the claimants will be entitled to a total sum of Rs. 19,24,840/- alongwith the interest at the rate of 6% per annum from the date of filing the claim/application i.e. on 08.05.2007 till final payment.

10. As may be noticed the appellant deposited 50% of their share of the awarded

amount amounting to Rs. 12,50,240/- and the same was equally divided into three shares and withdrawn by the respondent Nos. 1, 2 and 3 respectively and therefore, the amount to be paid by the appellant/Insurance Company will be less the amount already deposited and the interest also calculated on the unpaid balance. The unpaid balance should be deposited by the appellant/Insurance Company before the Registry of this Court within a period of 6(six) weeks from the date of receipt of the certified copy of this order. The statutory fee of Rs. 25,000/- deposited by the appellant at the time of filing the appeal will be adjusted to the amount to be paid to the claimants. The respondent Nos. 1, 2 and 3 will be at liberty to withdraw the deposited amount as per the share entitled to them on proper identification and as per usual formalities.

11. With the above observations and directions, the appellant stands disposed of. Office to send back the LCR to the Tribunal immediately.