(2012) 02 AHC CK 0317

In the Allahabad High Court

Case No : F.A.F.O. No. 198 of 1995

Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Rizwana Saida and Others RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2012) 3 TAC 499

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : P. Chandra, for the Appellant; P.K. Punkani, Shri M.A. Kidwai, Shri M. Ayub and Shri Mohnish Iqbal, for the Respondent

Final Decision : Allowed

Judgement

Dr. Satish Chandra, J.—The present appeal has been filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 10th March, 1995 passed by the Motor Accident Claims Tribunal, Barabanki in Claim Petition No. 21 of 1991. The brief facts of the case are that on 7th August, 1990, at about 7.00 p.m. the deceased Ali Zafar Rizvi was going on his motorcycle No. UGI 6733 from Lucknow to Barabanki. When he reached near Alapur bridge, a Truck bearing No. UTC 9507, which was being driven by the driver rashly and negligently, hit the deceased. The deceased suffered injuries, so he was admitted in King George''s Medical College, Lucknow, where he died after two days. The Tribunal has awarded a compensation of Rs. 2,85,500/- alongwith interest against the appellant-Insurance Company. Being aggrieved, the Insurance Company has filed the present appeal.

2. Sri Tarun Kumar Misra, learned Counsel for the appellant submits that the truck in question was insured in favour of the defendant-respondent No. 5. The truck was being driven in a rash and negligent manner, and therefore, the owner of the truck was also liable to pay compensation. According to him, no information was furnished to the Insurance Company regarding the accident. The

Tribunal has wrongly relied upon the Indian Evidence Act, which is not applicable in the present case. He further submits that the quantum of compensation is also on higher side. The interest @ 12% per annum was also given, which was enhanced to 18% and the same is on higher side. So, he made a request that the impugned order may kindly be set aside.

3. On the other hand, Sri Rajendra Jaiswal, learned Counsel for the respondent No. 5 justified the impugned order.

4. After hearing both the parties and on perusal of the materials available on record, it appears that the truck in question was duly insured with the appellant-Insurance Company. The insurance was valid on the date of accident and the driver was having a valid licence at the time of accident. Hence, we are of the view that the truck was being plied as per the terms and conditions of the insurance policy and the Insurance Company is liable to pay the compensation. The Tribunal has taken the income of the deceased (c) Rs. 1,000/- per month only. The amount pertaining to funeral expenses, loss of consortium; and loss of estate was also awarded to the deceased. The age of deceased at the time of accident was 23 years only and he was married.

5. It may be mentioned that it is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in West v. Shepard, (1964 AC 326). Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. Upjohn L.J. in Charter House Credit v. Jolly, (1963) 2 C.B. 683, remarked, ''the assessment of damages has never been an exact science; it is essentially practical''.

6. The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the later case there is possibility of repair or restoration. But, in the case of personal injury, the possibility of repair or restoration is practically nonexistent. In Parry v. Cleaver, 1969 1 All. E.R. 555, Lord Morris stated as follows:

To compensate in money for pain and for physical consequences is invariably difficult, but...no other process can be devised than that of making monetary assessment.

7. The main principles of law on compensation for injuries were worked out in 19th Century, where railways accidents were becoming common and all actions were tried by Jury. Though the cases have antiquated air it is still useful to refer to them. The necessity that damages should be ''full'' and ''adequate'' was stressed by the Court by Queen''s Bench in Fair v. London and North-Western Railway Co., (1869) 21 L.T. 326. The word ''compensation'' is derived from Latin word "compensare" meaning "weigh together" or "balance". In Rushton v. National Coal Board, (1953) 1 All. E.R. 314 it was observed :

Every member of this Court is anxious to do all he can do to ensure that the damages are adequate for the injuries suffered, so far as they can be compensated for an injury, and to help the parties and others to arrive at a fair and just figure.

8. It has to be kept in view that the Tribunal constituted under the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which appears to be ''just''. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But, at the same time, it has to be borne in mind that the compensation is not expected to be a wind fall for the victim.

9. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and

Another, .

10. The Hon''ble Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , laying the principles posited:

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

11. In view of above discussion, we uphold the compensation awarded by the Tribunal. However, the interest imposed appears on higher side. The Tribunal has awarded the interest @ 12% upto two months and later, it was enhanced to 18%. In the peculiar facts and circumstances, we are of the view that interest must be similar to the bank rate at the relevant time. Therefore, by keeping in mind the ratio laid down in the cases of Tejinder Singh Gujral v. Inderjit Singh and another, 2007 (1) T.A.C. 15 (S.C.) as well as in the case of National Insurance Co. ltd. v. Keshav Bahadur and others, 2004 (2) T.A.C. 1 (S.C.), we allow the interest @ 9% per annum on the award amount in question. For this purpose, the impugned award of the Tribunal is modified. The amount, if any, deposited in this Court, shall be remitted within a period of four weeks alongwith lower Court record. In the result, appeal filed by the appellant-Insurance Company is partly allowed, as stated above.

