
(2009) 06 SHI CK 0046
In the High Court Of Himachal Pradesh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Savitri and Others
 Smt. Savitri and Others Vs
Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 16-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 4 CivCC 586 : (2010) 4 RCR(Civil) 107

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The present appeals arise out of common impugned award dated 1.7.2006 passed by the Motor Accident Claims Tribunal, Solan, H.P. Appeal No. 281 of 2006, titled Oriental Insurance Company Ltd. v. Smt. Savitri Devi and Ors. has been filed by the insurer M/s Oriental Insurance Company Ltd and Appeal No. 277 of 2008, titled Smt. Savitri and Ors. v. Oriental Insurance Company Ltd. and Ors. has been filed by the claimant Smt. Savitri and others. In terms of the impugned award the Tribunal has awarded a sum of Rs. 12,68,000/- alongwith interest at the rate of 7.5 % p.a. from the date of filing of the application i.e. 1.10. 2005 till the date of the deposit of the awarded amount.

2. Shri Raj Kumar, predecessor-in-interest of the claimants met with a motor vehicle accident on 28.6.2005 and succumbed to his injuries on 3.7.2005. Claimant Smt. Savitri being wife, Master Naman (minor son) and Smt. Krishna , mother, filed claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), claiming compensation of Rs. 25 lacs. The deceased was travelling in Maruti car No. HP-11-4600 owned and driven by Shri Rattan Singh. Due to the negligence of the driver the accident occurred on 28.6.2005 near village Chandi, H.P. Both the driver and the deceased sustained injuries. Sh. Raj Kumar was given medical treatment, both at the State Hospital, IGMCH, Shimla and PGI, Chandigarh where he succumbed to his injuries on 3.7.2005. At the time of the accident Shri Raj Kumar was a government servant and employed as

Pharmacist in the Animal Health/ Breeding Department (Animal Husbandry), State of Himachal Pradesh and drawing a salary of Rs. 9058/- per month. He was 34 years of age and the only bread earner in the family. In addition to the salary he was also having income of Rs. 10,000/- per month from agricultural source.

3. The legal heirs of the driver/owner filed reply admitting the occurrence of the accident. They, however, pleaded that the vehicle being insured with M/s Oriental Insurance Company Ltd., the liability was that of the insurer.

4. In separate reply filed by the insurer the claim petition was contested on merits, after taking permission u/s 170 of the Act.

5. Based on the pleadings of the parties the Tribunal framed the following issues:

1. Whether the death of deceased Raj Kumar was has arisen out of the use of motor vehicle on account of rash/negligent driving of the car No. HP-11-4600 by its deceased driver? OPA

2. If issue No. 1 is proved in affirmative to what amount of compensation the petitioners are entitled to and from whom? OPP

3. Whether the deceased driver of the car did not possess a valid and effective driving licence and other documents? OPR-3

4. Whether the vehicle was being driven in violation of terms and conditions of the policy? OPR-1

5. Relief.

6. Opportunity to lead evidence was afforded to the parties. The claimants examined Shri Sita Ram (PW-1), Smt. Savitri (PW-2), Shri Sanjeev Kumar (PW-3), Shri D. N. Garg (PW-4) and Shri Abhishek (PW-5).

7. In rebuttal the respondents examined Smt. Lata (RW-1) and Shri Ramesh Verma (RW-2).

8. Based on the material on record, the Tribunal concluded that Shri Raj Kumar had died in a motor vehicle accident, as car No. HP-114600 was being driven by the deceased driver in a rash and negligent manner. The Tribunal found the driver to have possessed with an effective and valid driving licence. The vehicle was being driven in accordance with the provisions of law and none of the provisions of the law or the terms and conditions of the policy stood violated, hence the liability to pay the compensation was that of the insurer.

9. Taking into account the income of the deceased to be Rs. 12,000/- per month and determining the loss of dependency to be Rs. 8000/- as his contribution to the family, by applying a multiplier of 13, the total loss of income was worked out to be Rs. 12,48,000/-. In the absence of any proof of income from agricultural source nothing was awarded for the same. Rs. 20,000/- was awarded towards conventional charges, funeral charges and loss of love and affection and consequently Rs. 12,68,000/- was awarded in favour of the claimants to be

apportioned as under:

10. Smt. Savitri (Petitioner No. 1): Rs. 5,00,000/- (with proportionate interest)

11. Master Naman (Petitioner No. 2): Rs. 5,00,000/- (with proportionate interest)

12. Smt. Krishna (Petitioner No. 3): Rs. 2,68,000/- (with proportionate interest)

13. Mr. Ashwani Kumar Sharma, learned Counsel for the insurer has assailed the impugned award for the reason that: (i) in the absence of any premium being charged to cover the risk of the passengers in the car no liability could have been assumed for the risk of passengers and hence no order for payment of compensation could have been foisted upon the insurer. (ii) in any event the compensation awarded is much on the higher side as the monthly income and the multiplier adopted by the Tribunal is not based on the material on record.

14. Per contra, Mr. Anup Rattan, learned Counsel has pressed for further enhancement of the awarded amount of compensation on the ground that the Court below has erred in applying the multiplier on the lower side and also not taken into account the agricultural income of the deceased.

15. I have heard the learned Counsel for the parties and also perused the record.

16. The legal heirs of the driver have accepted the award as no appeal has been filed by them.

17. Certain undisputed facts which have emerged from the record are as under:

(i) Shri Raj Kumar died as a result of a accident of an motor vehicle Maruti car No. HP-11-4600 on 3.7.2005. FIR (Ext.PW-1/A) was also registered. (ii) The vehicle was owned and driven by Shri Rattan Singh, husband of Smt. Lata and father of Master Deepak, respondents herein. In the said accident Shri Rattan Singh also died. (iii) The accident occurred due to the rash and negligent driving on the part of Shri Rattan Singh. (iv) The deceased undertook medical treatment initially at IGMCM, Shimla and then at PGI Chandigarh which stands proved from medical record (Ext.P-1 to P-22). (v) The deceased was a Government servant and drawing a net salary of Rs. 8476/- [Rs. 9058 - Rs. 532 (income tax) + Rs. 50 (professional tax)] (Ext.PW 4/A). (vi) Deceased owned agricultural land (Ext.P-31 to P-33). (vii) The vehicle was insured as per cover-note Ext. RB and insurance policy Rxt. RD. (viii) The driver was possessing a valid and effective driving licence Ext. RC.

18. It is now a settled law that damages payable to the injured in an accident are divided into two parts. Pecuniary damages capable of calculation in terms of money and other is the non-pecuniary damages. Pecuniary damages is the loss suffered by the victim due to loss of earning or other profits including the medical expenses on his treatment whereas the non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. They normally include damages for pain and sufferings, damages for loss of amenities of life, expectation of life and inconvenience, hardship caused to the injured on

account of such accident. This view has been taken in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,

19. During the course of hearing Mr. Ashwani Kumar Sharma, learned Counsel has placed on record the Private Car Package Policy. Section II of the said policy provides for as under:

Section II LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

2. The Company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity granted by this section to the insured, the Company will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission provided that such driver shall as though he/she was the insured observe fulfill and be subject to the terms exceptions and conditions of this Policy in so far as they apply.

4. In the event of the death of any person entitled to indemnity under this policy the Company will in respect of the liability incurred by such person indemnify his/her personal representative in terms of and subject to the limitations of this Policy provided that such personal representative shall as through such representative was the insured observe fulfill and be subject to the terms exceptions and conditions of this Policy in so far as they apply.

5. The Company may at its own option

(A) arrange for representation at any Inquest or Fatal Inquiry in respect of any death which may be the subject of indemnity under this Policy

and

(B) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Policy.

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement hereon shall affect the right of any person indemnified by this Policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act.

But the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions.

APPLICATION OF LIMITS OF INDEMNITY

In the event of any accident involving indemnity to more than one person any limitation by the terms of this Policy and/or of any Endorsement thereon of the amount of any indemnity shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the insured.

20. The cover-note Ext. RB and the insurance policy Ext. RD evidence the fact that the premium stood paid which covered the car in terms of the said Private Car Package Policy. Hence the plea taken that in the absence of any premium being charged to cover the risk of passengers no liability could have been fastened upon the insurer is misconceived.

21. In addition to the loss of dependency, I am of the view that the claimants are also entitled for compensation on account of expenditure incurred towards medical treatment. PW-2 has categorically deposed that she incurred an expenditure of approximately one lac for undertaking the treatment of her deceased husband. It stands proved on record that on 28.6.2005 the deceased was initially taken to Primary Health Centre, Chandi from where he was referred to the State Government Hospital (IGMC) Shimla where he remained admitted from 28.6.2005 up to 2.7.2005. The condition of the deceased deteriorated, hence he was referred to the Post Graduate Institute at Chandigarh where he was admitted on 2.7.2005 but died on 3.7.2005. The medical bills with regard to the expenses Ext. P-1 to Ext. P-22 have been proved on record. The total sum of the same comes to Rs. 3945/-. The deceased and the claimants were residing in Subathu from where Shimla is 70 km (approx.) and Chandigarh is 100 km (approx). Even though there is no documentary evidence on record with regard to the expenses incurred towards travelling from Subathu to Shimla and from Shimla to Chandigarh, but however, one cannot loose site of the fact that the deceased had to undergo treatment at both these places. Some expenditure towards diet money, attendant charges and private transportation ought to have been incurred by the claimants for the same. Therefore, guess work is required to be carried out. Keeping in view the totality of the circumstances as also the material brought on record I am of the view that a lumpsum amount of Rs. 20,000/- would be appropriate on the said count.

22. From the statement of Smt. Savitri (PW-2) as also Shri D. N. Garg (PW-4) Agriculture Extension Officer, who has proved the salary certificate it is evident that the petitioner was having a net salary of Rs. 8476 and not Rs. 9058/- as held by the Tribunal. The deceased had a remaining service career of nine more years and would have atleast got one promotion in his career had he survived.

Judicial notice can be taken of the fact that the income of the deceased would have doubled by the time he would have superannuated. The Court below has taken the income of the deceased to be Rs. 12,000/- per month, after taking into account the increase in the salary which would have occurred during the service period of the deceased.

23. This is absolutely in the light of the ratio of law laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein after taking into account the various decisions rendered by the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, it has been held that:

In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"].

24. The Tribunal has erred in not taking into account the statutory deductions. But, however since the difference in the amount is not much hence I am not inclined to interfere with the figure determined by the Tribunal. After reducing the same by 1/3rd the net loss towards dependency comes to Rs. 8000/- per month.

25. With regard to the income from agricultural source, Smt. Savitri (PW-2) has placed on record the revenue record Ext. P-31 to Ext.P-33 to show that the deceased as co-owner, was exclusively possessing 8-10 bighas of land situated just at a distance of about 15 to 16 kms from Subathu, the place of posting of the deceased. PW-2 has further deposed that on the weekends and in the morning and evening deceased used to work in the fields. However, there is no proof of actual income from the agricultural source. Importantly, she has not deposed as to in what manner the deceased used to contribute to generate income from the agricultural source. She has further not deposed that the death of the deceased has resulted into loss of income from agricultural source or that she has to incur any expenditure for engaging labourers/third party to ensure that the land is tilled and income is generated. Her statement that the deceased used to make contribution towards the agricultural income does not inspire confidence for the reason that she has deposed that the deceased used to leave home for the job at about 8.30 a.m. in the morning and come back only at 6.30 p.m. in the evening. Hence I see no error in the findings returned by the Tribunal to the effect that the death of the deceased has resulted into any loss of income from the agricultural source.

26. The age of the deceased is not in issue and the Tribunal has held him to be 34 years old at the time of the accident.

27. In Sarla Verma (supra) the Court has further held as under:

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling u/s 166 and not u/s 163A of MV Act. In cases falling u/s 166 of the MV Act, Davies method is applicable.

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

28. Keeping in view the aforesaid ratio the multiplier of 13 as applied by the Tribunal, needs to be increased to atleast 16. The Tribunal has erred to this extent.

29. Even the Division Bench of this Court in FAO No. 488 of 2000, titled as Veena Mahaldar and Ors. v. R.K. Khanna and Ors., decided on 28.11.2008, after taking into account the ratio of law laid down by the Apex Court in various judicial pronouncements, in identical circumstances where the deceased was 34 years old, determined the compensation by applying the multiplier of 16.

30. Therefore, the claimants shall be entitled to a sum of Rs. $8000 \times 12 \times 16 =$ Rs. 15,36,000/- towards loss of income on account of dependency. Thus the claimants in all are entitled to Rs. 15,36,000 + Rs. 20,000 + Rs. 20,000 = Rs. 15,76,000/-. The amount shall be apportioned among the claimants in the very same ratio in which the Tribunal has apportioned the awarded amount.

31. The impugned award is modified to the aforesaid extent.

32. No other point urged.

33. The appeal filed by the claimants is allowed and that of the insurer is dismissed.

34. The insurer is directed to pay the enhanced amount of compensation alongwith up to date interest as awarded by the Tribunal within a period of four weeks from today.

CMP No. 219/2009 in FAO No. 281/2006

35. In view of the decision of the main appeal Mr. Anup Rattan, learned Counsel does not press the present application however he seeks liberty to file comprehensive application in accordance with law. Application is disposed of.