
(2011) 03 CAL CK 0107
In the Calcutta High Court
Case No : F.M.A.T. No. 1109 of 2010

Payel Biswakarma (Ghosh)	Vs	APPELLANT
Oriental Insurance Company Ltd.		RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Constitution of India, 1950 — Article 21
Motor Vehicles Act, 1988 — Section 166, 168, 171

Citation : (2011) 5 CHN 581

Hon'ble Judges : Prabhat Kumar Dey, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Saidur Rahaman, for the Appellant; Nilendu Bhattacharya, Sujit Chakraborty, Sarbani Chakraborty, for the Respondent

Judgement

Amit Talukdar, J.—If allowed, we would have shed ours in the stream of tears that has drifted away the fate of these two Appellants; one at the blossom of her youth, the other at her gerontic age. Could fate be so cruel? A newly wed young bride, barely 19 having to lose her soul mate within 11 months of her marriage and a Mother, her son.

2. Inconsolable loss, incessant tears, inherent insecurity, insipid response--have made up the confection of these two helpless women; one at the threshold of life's journey and another in her December term at the post stage when death claimed their husband and son respectively.

3. It is said that cold logic of Law must apply. But in some situations it is required to see whether the said cold logic can numb the judicial sense and make its finding frost bitten.

4. Fate has robbed the smile from the face of this young girl (A-1) and put further crease in the contours of her (A-2) wrinkled face. We would wipe out from our mind either of these two tragic profile and concentrate on law.

5. The basic nuances that have formed the mechanism of this appeal in such

heart rendering situation, are required to be deciphered or a proper application of the entire issue that has fallen before us for consideration in the light of the tragedy befallen before these two appellants.

6. A mid Summer morning (18/04/2008) brought darkness at noon or the family of the appellants when their bread earner got involved in an accident with the mini Truck insured by respondent No. 1, as a result of such accident, the injuries received by him were fatal and he was pronounced dead at the Sadar Hospital Maida. Necessary legal steps followed.

7. A claim petition was filed u/s 166 of the Motor Vehicles Act (hereinafter referred to as the "said Act") jointly by these appellants before the Motor Accident Claims Tribunal, Malda, which gave rise to M.A.C.C. Case No. 104 of 2008.

8. In course of the said proceeding, the appellant No. 1 examined herself as P.W.1, whilst one Prahlad Ghosh, an eye-witness, was examined as P.W.2. From the evidence of P.W.1 it appears the accident took place on 18.04.2008 at about 10-15 a.m. due to a collision with the vehicle owned by the respondent No.2 (non contested), which resulted in the death of her husband Rama Shankar Biswakarma.

9. According to the evidence of P.W.1, the deceased Rama Shankar had a Lathe business and earned Rs. 3,000/- to Rs. 3,500/- per month. At the time of his death, he was 27 years of age. A claim was staked for Rs. 1,90,000/-along with interest @12% per annum from the date of filing the Application till realisation of the compensation money.

10. She had made this prayer in her petition as well as deposed with regard to the same in accordance with her evidence before the Tribunal. Her deposition shows that she lost her husband within ten months from her marriage. Her cross-examination also reveals that the business or her late husband was being run by her Mother-in-Law (A-2) and she used to enjoy the income from the Lathe shop depriving her from the income.

11. The evidence of P.W.2, Prahlad Ghosh, who was an eye-witness speaks with regard to the manner in how the accident took place. In his cross-examination P.W.2 spoke about the Lathe business of the deceased, which was near his Hotel at Naldubi.

12. It would be important to note that in his cross-examination, the following piece was construed by the learned Tribunal in a manner, which is not borne out from evidence. It reads as follows:

Fact remains the accident took place within pitch road and at that time there was jam on the road. Might be for lack of patience of Ramasankar Viswakarma accident took place.

Not a fact for the fault of Ramashankar accident took place but not for the driver.

13. On the basis of the said evidence and upon hearing the submission of the Insurance Company, respondent No. 1 (R- 1 for short), the Tribunal by its Judgment & Order under Appeal of 17/02/2010 directed R-1 to pay a sum of Rs. 1,70,000/- in favour of A-1 and A-2 in the ratio of Rs. 1,30,000/- for A-1 and Rs. 40,000/- for A-2.

14. Apart from applying the default clause of interest @ 6% per annum, in the event the claim amount was not disbursed within two months from the order, no separate order for interest was passed.

15. This has seen these two distraught appellants in appeal in the fashion that we have noted hereinabove.

16. Shri Saidur Rahman, Counsel for the appellants has taken us through the Judgment & Order under appeal. He was of the view that the Tribunal proceeded in an erroneous fashion while assessing the compensation, which was to be payable in favour of A-1 and A-2.

17. Shri Rahman showed from the finding of the Tribunal that there was no discussion with regard to the actual income of the Deceased. The award passed by the Tribunal, according to Shri Rahman, was the basis of non-consideration of the evidence.

18. He has also submitted that apart from enhancement of the sum, it was a fit case where interest ought to have been paid.

19. Shri Rahman relied on the Division Bench decision of this Court in Chinu Rani Balo and Others Vs. National Insurance Co Ltd. and Another, and submitted that when the Court comes to the finding that the claimants are entitled to a higher amount, the Court has always the power to grant compensation more than the sum that has been claimed as Just compensation.

20. Shri Rahman has referred to the decision of Hon'ble Apex Court in Laxmi Devi and Others Vs. Mohammad Tabbar and Another, on the self-same proposition.

21. Shri Nilendu Bhattacharya for the respondent, Insurance Company made submissions in extensive details.

22. Initially, we reserved our judgment on conclusion of the hearing on 17.02.2011 and fixed the matter for delivery of judgment on 28.02.2011. While we were to dictate our judgment in Court, Shri Bhattacharya came up and submitted that he want to make further submission as he has some more citations to rely upon.

23. Although unusual, and in a way it interferes with the business schedule of the Court--for the purpose of fair play and Justice, we allowed Shri Bhattacharya to do so and accordingly fixed the matter for further hearing and thereafter on conclusion of the same on 08.03.2011, we reserved our judgment.

24. Shri Bhattacharya gave us a lengthy version of his views with regard to how public money should be safeguarded while acceding to the claim made in this type of cases. As he felt that no prima facie case has been made out by the appellants for enhancement of the compensation money and leave alone interest, the Appeal was liable to be dismissed.

25. Shri Bhattacharya placed great reliance on the fact that as already the claim amount have been received by these appellants in pursuance of the Order of the Tribunal, they were estopped from laying, a claim afresh. He cited the decisions of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and also Nagappa vs. Gurdayal Singh, reported in 2003 (1) WBLR 774, to show that although the Tribunal is to award just compensation, the amount has to be reasonable and in consonance with the entitlement criteria of the Claimants, otherwise, the same is not permissible, if any amount, which is given that does not fits in with the circumstances of the particular case then the award would be illegal.

26. Referring to the Constitution Bench decision of State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others, , Shri Bhattacharya submitted that being bound by the rule of stare decisis we should follow the decision of General Manager, Kerala SRTC Trivandrum vs. Susamma Thomas & Ors. (supra) and Nagappa vs. Gurdayal Singh (supra).

27. If we have understood Shri Bhattacharya correctly, he has referred to the Three Judge Bench decision of the Supreme Court in B.P. Achala Anand Vs. S. Appi Reddy and Another, , to illustrate what is Judicial activism. He took us simply to Paragraph 1 of the said decision of the Three Judge Bench to show that judicial activism has its limit.

28. Much to our amusement, we find that none of the decisions relied upon by Shri Bhattacharya has any relevance in the factual matrix of the present case. If we begin from the end where he has stopped placing decisions--the reference made by him to B.P. Achala Anand vs. S. Appi Reddy & Anr. (supra)"s case that Judicial activism must have a particular stand, we are extremely sorry that the proposition as laid by the Chief Justice of India speaking for the Three Judge Bench in paragraph 1 is absolutely otherwise and does not fit in any manner with the situation that Shri Bhattacharya wants him to find place.

29. That apart, while considering a prayer either for enhancement or for grant of award of interest on compensation amount against the Order of the Tribunal under the said Act-- however, emotive we may be, we have to abide by the statute, whatever broad vision we may envisage. Where is the question of Judicial activism we failed to understand. However, for the conclusion that we would arrive at, it will speak for itself as to whether it is Judicial activism or a just decision.

30. Moving ahead, we find he has referred to the decision of Nagappa vs.

Gurdayal Singh (supra), which has taken note of the decision of General Manager, Kerala SRTC Trivandrum vs. Susamma Thomas & Ors. (supra)-Shri Bhattacharya tried to impress upon us on the strength of the decision of Nagappa vs. Gurdayal Singh (supra) that enhancement of the amount of compensation is not permissible. After all, it was public money.

31. We feel in our reading of the decision in Nagappa vs. Gurdayal Singh (supra)"s case that it is exactly opposite to what have been felt by Shri Bhattacharya. The Supreme Court in the said decision of Nagappa vs. Gurdayal Singh (supra) has dealt with a case where permission, even at the appellate stage, to enhance the claim amount on the facts of a case and on the basis of the evidence on record as well as interest of justice, can be granted. In the said decision It was further held by Their Lordships that prayer for enhancement of such claim is not subject to any limitation nor does it involve the introduction of new or inconsistent cause of action.

32. Coming to the General Manager, Kerata SRTC Trivandrum vs. Susamma Thomas & Ors. (supra"s) case, we also do not find that Shri Bhattacharya"s apprehension with regard to the bar in enhancement of the amount can find sustenance from the said judgment. The Supreme Court in the said decision, while deciding the question of compensation, dwelt on the concept of Just, fair and reasonable grounds and further held that the multiplier method of computation is proper as well as logical and sound method of determining the amount.

33. In our opinion, even though the Tribunal has the trappings of a Civil Court, the question raised by the Counsel for the Insurance Company that as already the amount has been received by the appellant on the strength of the order passed by the Tribunal, they were injuncted from laying a fresh claim for enhancement would not hold much water. After all, this is piece of social welfare legislation. An accrued legal right made available in the steps as known to law, cannot be scuttled in the fashion as felt by him.

34. In Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, Their Lordships had held that social welfare legislation should be construed in a manner so as to effectuate the purpose of the Act. The said Act, which stands amended," seeks to protect the interest of next of the kith and kin and the insured so as to secure a future for them.

35. O. Chinappa Reddy, J. speaking for the Supreme Court in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, has held:--

semantics luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare status must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

36. A litany of lapses have dredged up in this Appeal, right from the stage of evidence before the Tribunal. We will simply go by the logistics of the situation without either being guided by the horrendous turn of events that overtook these two poor appellants in the fashion that has been noticed before the Tribunal.

37. Persistent evidence of both P.W.1 and P.W.2 shows that from the (sic)the business of the deceased Husband of A-1, the family earned. Rs. 3,000/- per month. Cross-examination of A-1 shows that she sticks to her earlier version that income of the deceased was Rs. 3,000/- per month. To the dismay of any person, it appears that the income from the said business is enjoyed by A-2 keeping out A-1 from the said share. P.W.2 has also corroborated with regard to the income of the deceased from the Lathe business he ran, situated just opposite to his hotel, in the claim petition as well as in her evidence before the Tribunal, she has laid a claim for Rs. 1,90,000/-.

38. Shri Bhattacharya has also made a supplementary submission that there was fault of the deceased In the accident. While assessing the finding in respect of the compensation as returned by the learned Tribunal, we would also look into the said point.

39. The Tribunal held :

.....But from this evidence it is also clear that it was head on collision in between truck and motor cyclist and he has admitted that incident took place within pitch road and that time there was a jam on the road and for lack of patience of Rama Sankar accident took place

40. Based on the same, learned Tribunal inferred ".....So, fault was there on the part of the deceased for which head on collision was held,...."

41. This would require of us to revert to the evidence of P.W.2 once again. His cross-examination reveals ".....It is a fact that the accident was nothing but a head on collision. Fact remains the accident took place within pitch road and at that time there was jam on the road. Might be for lack of patience of Ramasankar Viswakarma accident took place." As such, what was his opinion, was put in the mouth of P.W.2 as his admission in cross-examination by the learned Tribunal. This is wrong.

42. Next we find in the Judgment & Order under Appeal that "...it is proved from the evidence of P.W.1 that Ramasankar has a running hotel business and lathe business so he had income from the said business. But widow wife of Ramasankar is engaged house wife at present. A very careful reading of the evidence of the widow of the deceased would never show that he had any hotel business but simply he ran a lathe machine shop.

43. Blisters in the said finding are too prominent. It simply shows misreading of the evidence and nothing else. The Tribunal has concluded "...No doubt Rama Sankar had his business and he had income to the extent of Rs. 3000/- and his age was 27 years. So, he had his good future. Fact remains within 1,1 months

from the date of his marriage he died and his youthful wife is now widow and she is now residing at his father house and she driven away by her mother in law...."

44. Thereafter, it arrived at the opinion "....Fact remains the applicants jointly have prayed for compensation to the extent of Rs. 1,90,000/- which is meager amount in view of the age and income of the deceased Rama Sankar but considering the composite liability of the driver of the offending vehicle including the deceased a sum of Rs. 1,70,000/- is awarded finally u/s 166 of M. V. Act....."

45. As we have found, that on the basis of the opinion of P.W.2 the finding with regard to fault of the deceased was arrived at by the learned Tribunal, we feel that cannot be based on sound reasoning. We would set aside the same.

46. Now, this would bring us to the quantification of the claim. Rs. 3,000/- per month have been assessed as the income of the deceased uniformly through the evidence. In the cross-examination of P.W. 1, she could not be discredited to this extent. As such, even if we accept that the amount of income of the deceased remains Rs. 3,000/-per month, it works out as Rs. 3,000 x 12= Rs. 36,000 less 1/3rd deduction= Rs. 24,000/. It has been borne out from evidence that when deceased Rama Shankar met with the accident he was 27 years old. Applying the multiplier of 18 the sum would come to Rs. 4,32,000/-.

47. In view of the arithmetic of the situation, we would be feel the amount assessed by the Tribunal should be modified to Rs. 4,32,000/-.

48. As we find that there has been an increase of the compensation amount on the basis of our calculations applying the multiplier method after we have overruled the composite negligence of the deceased..... we do not wish to go into the aspect of just and fair compensation. We are of the view that in the fact situation, such increase, for whatever little purpose, made available to the appellants, would be there and decision for further enhancement may not be appropriate. The decisions relied upon, by Shri Bhattacharya in General Manager, Kerala SRTC Trivandrum vs. Susamma Thomas & Ors. (supra) and Nagappa vs. Gurdayal Singh (supra), which does not help him in any manner, would not be hence applied in the factual matrix of the present case.

49. Necessarily, the decision of Constitution Bench in State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat (supra)'s case on the question of stare decisis also becomes inapplicable in view of the discussions made by us hereinabove.

50. We cannot decipher the reasons behind Shri Bhattacharya's reference to B.P. Achala Anand vs. S. Appi Reddy & Anr.'s case (supra). We have simply proceeded on the basis of what is required of us under the Law. Thus far and no further.

51. Reference of Shri Rahman to the decisions of Chinu Rani Balo & Ors. vs. National Insurance Co. Ltd. & Anr. (supra) and Laxmi Devi & Ors. vs. Mohammad Tabbar & Anr. (supra) are required to be dealt with as such.

55. This would now bring us to the question of interest as raised by Shri Rahman.

53. While veering to the point of interest, it would be profitable to set out the provisions contained in the said Act:--

171. Award of interest where any claim is allowed.--

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

54. Section 171 of the said Act forms an integral part of Chapter XXI of the said Act, which incorporates the preceding provisions with regard to the power of Tribunal in awarding compensation. Section 171, in pur experience, although has to be viewed in the cusp of the i provisions of sections 166 and 168--remains a neglected child before the Tribunal. Seldom we find that there is proper appreciation of the legislative intent behind section 171.

55. Apart from application of default clause, experience has shown that in most of the cases serious thought is not spent behind the benign provision of section 171 of the said Act.

56. Ideally, the amount of compensation should be liquidated forthwith. But it is not so. Delay punctuated by several reasons accentuates the woes and misery of the claimants pushing them to further despair. Interest recompenses their otherwise unavailable money, which is made available after delay. While it is poor consolation for the recipient of a claim amount to know the reason behind the delay in receiving the payment, fact remains he or she sinks into a loss. At a loss to comprehend with the situation at the post stage of the tragedy/injury and as to why the money, which have been made payable but not being made available.

57. Element of compensation is germane in an order of interest, which is put at this stage to have an overall work out of a just compensation.

58. Even though the provisions of section 171 is directory but in the prism of the legislative background behind enactment of this provision, the word "may" should be read as "shall" and it is appropriate that the order of compensation always carry an amount of interest. It cannot be lost sight that section 171 is not a distant cousin of the preceding provisions of sections 166 and 168 of the said Act. Neither it is the jurisdiction of a Court in the nature of charity or the whims as when to exercise and when not to exercise. There must be solid reasons behind exercise of the said power. Failure to award any interest; more so, demands that there must be cogent reasons.

59. Question of interest is now no longer res Integra by virtue of galaxy of decisions of the Supreme Court. [See : (1) Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , (2) Arun Kumar Agrawal & Anr. vs. N. I. Company Ltd., 2010 ACC 313 SC, (3) General Manager, Kerala

SRTC Trivandrum vs. Susamma Thomas & Ors. (supra) (4) Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, and (5) Managing Director, Tamil Nadu State Transport Corporation Ltd. vs. K.I. Bindu, 2005(7) Supreme 171.

60. Following the Supreme Court decisions, the various Division Ranges of this Court in Kohinur Begum & Ors. vs. New India Assurance Co. Ltd. & Anr., reported in 2008(2) TAC 711 (Cal) as well as in Sabita Singha & Ors. vs. National Council of Regional Scheme Centre & Anr., 2007(1) WBLR (Cal.)184, Mira Debi Chowdhury vs. Chhatelal Chowdhury, 2007(1) WBLR (Cal) 596 and in Chhaya Bishi & Ors. vs. N.I. Co. Ltd. & Anr. in connection with F.M.A. No. 756 of 2007 delivered on 18/02/2011 have applied the provisions of section 171 in respect of award of compensation.

61. After having held with regard to the applicability of grant of interest in a compensation, we would also hold that the default clause, which is very liberality applied by various Tribunals that in the event the amount of compensation is not paid within a certain date it will carry order of interest-has no warrant in law in view of the dicta of section 171 of the said Act.

62. This would now" bring us to the question as what would be the amount of interest. Various decisions have directed compensation of various rates of interest as the statute is silent. Discretion is left before the Court to quantify the amount. It must be rational and need based. There cannot be a straight-jacket formula with regard to rate of interest in every other case. We have to balance various, probabilities while assessing the quantum of interest.

63. In this appeal, we have before us two mute consumers of Justice, whose plight would melt even the strongest heart. From the first one (A-1), all the colours of life have faded away. For the second one (A-2), the hope of life has tapered off. Even though we have shifted from the divine model of Justice to an adversarial system--we are always on God's Errand. Particularly in this case we have to exercise our discretion with a mission of Justice so as to stretch it in the fashion as known to law, as much as it is permissible so as to secure sustenance for these two defenceless women.

64. In Kausbnuma Begum vs. New India Assurance Co. Ltd. (supra) and Abati Bezzbaruah vs. Deputy Director General, Geological Survey of India (supra) the Supreme Court assessed the interest @ 9% per annum. The decision of Kaushnuma Begum vs. New India Assurance Co. Ltd. (supra) was rendered in the year 2001 while the decision of Abati Bezzbaruah vs. Deputy Director General, Geological Survey of India (supra) was delivered on 2003. Nearly ten years have elapsed and then the price index has risen. We feel that in the particular fact situation of the present case, the rate of interest should be commensurate with the plight in which these two Appellants have been pushed into.

65. We have before us a judgment of the Supreme Court in Smt. Deepa Garg and Others Vs. Rakesh Kumar and Others, where the Supreme Court had

awarded interest @ 12% per annum. Taking a cue from the same, we would be inclined to award interest(r) 12% per annum on the claim amount, which would be leviable from the date of filing of the claim petition till such time the modified amount is disbursed.

66. Material silver cannot restore the golden days, which has been forever lost in the oblivion of time for the poor appellants; yet, whatever little that can be made available, in the steps as know to law --it should not be denied so as to see that they can eke out an existence which would mean a life as known to Article 21 of the Constitution and not simply animal existence. Before we say omega, we would direct the Insurance Company (R-1) to deposit the modified award along with the interest before the Tribunal within three weeks whereupon the appellants would be entitled to withdraw the same through an Account Payee Cheque in their individual name in the manner the method of disbursal was sought to be effected in the parent order.

Prabhat Kumar Dey, J

I agree.