
(2002) 09 PAT CK 0071
In the Patna High Court
Case No : M.A. No. 665 of 2000

Rambilash Gupta

APPELLANT

Vs

Arunabala Ghosh and Another

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)
Motor Vehicles Act, 1988 — Section 173

Citation : (2004) ACJ 400 : (2003) 1 PLJR 321

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Subro Sanyal, for the Appellant; Archana Meenakshee and Nirmal Kumar, for the Respondent

Judgement

S.N. Pathak, J.—This miscellaneous appeal is directed against the judgment dated 24.1.2000, passed by the Motor Accidents Claims Tribunal, Kishanganj in Claim Case No. 10 of 1989. The owner of the vehicle in question is the appellant here.

2. Appellant's lawyer has challenged the quantum of compensation fixed by the Tribunal. The claimant-respondent's lawyer submitted that appellant appeared in the court below, but did not file any W.S. either denying the alleged occurrence or challenging the case on any other ground. So he would be estopped from challenging the quantum of compensation fixed by the Tribunal. It was further submitted by the claimant-respondent that the insurance policy was neither produced by the insurance company nor by the appellant. Hence, the insurance company could not set up the case that its liability is limited.

3. Admittedly, the vehicle in question was insured and so it was further submitted by the appellant's lawyer that liability for paying the entire compensation money should have been fixed on the insurance company. However u/s 168 of the Motor Vehicles Act, the driver, the owner and the insurance company, all are severally and jointly liable. In the instant case, the

insurance company was directed to pay an amount of Rs. 50,000 which was its limited liability in view of Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939. Of course, the insurance policy was not produced by any of the parties. So the plea of the insurance company for limited liability was not available to it. But in spite of that, when the court thought it fit to place limited liability upon the insurance company, I do not think it committed any illegality by directing the owner of the vehicle to pay the remaining amount of compensation. I have already observed above that u/s 168 of the Act, the owner is not free from its liability to pay the compensation amount. So there is no illegality in the impugned judgment to this extent.

4. Now the question is whether the appellant who did not file any W.S. can challenge the quantum of compensation. In this connection, I am of the opinion that, of course, without filing any W.S., the appellant was handicapped in denying its liability on account of alleged accident, but since it had contested the case and was present throughout the trial, I think the owner is competent to challenge the quantum of compensation. In the instant case, a boy of 11 years was knocked down by the appellant's vehicle. So the moot question was what would be the appropriate and just compensation to be paid to claimant. The Tribunal held that the deceased's brother was carrying business of general store and earning Rs. 2,500 per month. The deceased's father was also having a pucca house on a piece of land measuring three kathas, behind the shop in question. The deceased was a student of class VIII. PW 4 said that he was earning Rs. 1,500 per month. The Tribunal, however, fixed the compensation amount of Rs. 5,00,000 plus Rs. 5,000 due to shock and agony to the family of the deceased. I fail to understand on what basis the Tribunal calculated this amount of compensation, when the deceased was a boy of 11 years. In case of a minor boy having no income of his own, in order to contribute any part of the same to his family; a lump sum amount of compensation is fixed or taking in view the structured formula in the Second Schedule of Motor Vehicles Act, 1988, compensation may be calculated by using a particular multiplier according to the age of the deceased or that of the claimant, whichever is higher. In the instant case, the quantum of compensation fixed by the Tribunal does not appear to be based on any of the aforesaid principles. Simply because normal expectancy of life of the family of the deceased was 70 years, it cannot be assumed that the boy who died could also live for 70 years and that he will also run a shop along with his brother and earn an income of Rs. 1,500 per month. Future prospect of a deceased may be considered along with uncertainties and vagrancy of lifespan. So by fixing a compensation amount on the basis of expectancy of life of the deceased and as per the claim of the claimant, the Tribunal would be falling into a trap while granting such compensation to the dependants of the deceased by way of a windfall or an unexpected gift which would be punitive to the owner or the insurance company. The Claims Tribunal should take a just and reasonable view of circumstances on the record and fix compensation amount which would be warranted by the status of the family of the deceased and the mental shock

and agony as faced by the bereaved family. Even if a lump sum is fixed, that should not be as per wishes of the claimant nor that should be so meagre as to leave the claimant high and dry. So I am of the opinion that the statutory income for non-earning member of a family which suffered, should be basis for computing the just amount of compensation. Rs. 15,000 is the amount as per the Second Schedule of Motor Vehicles Act. Reducing 1/3rd of the same, Rs. 10,000 would be the appropriate amount available to claimant's family per annum. The age of the claimant has not been mentioned in the impugned judgment of the Tribunal. According to the age of the deceased, figure "15" is the multiplier for the deceased of age up to 15 years. I am of the opinion that Rs. 1,50,000 should be the just and proper amount of compensation to be paid to claimant-respondent No. 1. Rs. 50,000 has been ordered to be paid to the claimant by the insurance company. So I am not going to include this amount in the amount of Rs. 1,50,000. Rs. 2,000 for the funeral expenses, etc., is added to this amount. So the total compensation amount to be paid by the appellant shall be Rs. 1,52,000. Other observations regarding the compensation amount, as stated in para 15 of the impugned judgment shall remain intact.

5. With the above modification in the amount of compensation, this appeal is dismissed at this very stage.