
(2012) 08 GAU CK 0009
In the Gauhati High Court
Case No : MAC App. No. 94 of 2011

Rekha Bayan

APPELLANT

Vs

Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 1 ACC 750

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : R. Goswami, for the Appellant; A. Dutta, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J

1. Heard Mr. R. Goswami, learned Counsel appearing for the appellant as well as Mr. A. Dutta, learned Counsel for the respondent Nos. 1 and 2. This is an appeal u/s 173 of the Motor Vehicles Act, 1988 by the claimants against the judgment and award dated 28th February, 2011 as passed in MAC Case No. 1148 of 2006 by the Motor Accident Claims Tribunal (FTC) No. 1, Kamrup, Guwahati.

2. The findings as regards the accident that occurred on 23rd December, 2005 for the rash and negligent driving of the vehicle (Motorcycle) bearing registration No. AS-01/X-9495, death of one Mon Mohan Bay on succumbing to the fatal injuries as received in the said accident and the insurance cover of the offending vehicle by the respondent Nos. 1 and 2 are not in dispute by either of the parties and as such those findings stand affirmed and a fresh appraisal thereof is avoided.

3. The solitary question that has been projected in the appeal is against the direction of the Tribunal which is reproduced for appreciation:

Thus, after considering the above aspects, it is seen that the annual income of the deceased was Rs. 1,62,204 per annum and his contribution towards the family was Rs. 1,21,653 per year. However, the deceased being a police officer under the Government of Assam, his family will also be entitled to draw family pension to the extent one-half of his actual salary at the time of his death i.e. they are entitled to drawing Rs. 81,101 per year as family pension. Therefore, if the suitable multiplier applicable in the present case is 11, having regard to the age of the deceased, then the total loss of dependency is $[(1,21,653) - (Rs. 81,101) \times 11] = Rs. 4,46,072$ (Rupees four lakh forty six thousands and seventy two) only. In addition, the claimants will also be entitled to a sum of Rs. 5,000 under the head of "loss of estate", Rs. 5,000 for funeral expenses and Rs. 10,000 as loss of consortium. The claimant side also produced medical voucher bill for about Rs. 1,40,868 (one lakh forty thousands eight hundred and sixty-eight) only incurred as cost of medical treatment of the deceased before his death. Thus, the total compensation that can be awarded to the claimants will be Rs. 6,06,940, i.e. to say Rs. 6,07,000 (Rupees six lakh seven thousands) only. Along with this amount, the claimants are also entitled to interest @ 6% per annum from the date of filing the claim petition i.e. from 8th May, 2006 till full satisfaction of the award.

Mr. R. Goswami, learned Counsel appearing for the appellant submitted that deduction of the family pension to the extent of Rs. 81,101 per year is unsustainable in view of the settled position of law. The appellants are entitled to get the same added to the annual loss of dependency. To buttress the contention Mr. Goswami referred a decision rendered in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, where the Apex Court after elaborate enunciation culled out the law as under:

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case,

bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

(Emphasis supplied)

The same reasoning has been followed in *Lal Dei and Others Vs. Himachal Road Transport*, and in *Mallika Datta and Another Vs. Rakhi Paul and Others*, , where it has been held that:

(13) A Bench of five Judges of this Court in *Smt. Saminder Kaur and Another Vs. The Union of India (UOI) and Another*, held (A.C.J. p. 11 para. 110):

11. We shall now take up question No. 1 relating to the permissibility of deduction of gratuity, family pension and other benefits attached to the service conditions of an employee. When a Government servant retires, he becomes entitled to provident fund, pension and gratuity benefits. Provident fund, or pension, or gratuity is the deferred payments of satisfactory service, savings and contributions of the deceased employee. These amounts his family would have in any case been entitled to get whether the employee died a natural death or died in an accident. Therefore, they ought not to be taken into consideration for determining the amount of just compensation, as they cannot be termed as pecuniary benefits. As regards family pension, the widow of a Government employee would be entitled to under the service conditions. We do not think that it is benefit received by the widow and the wrong-doer should be allowed to take advantage of the family pension and gain by it.

(14) In the light of the above decisions, the said deductions in respect of the amount of family pension received by the claimant No. 1/ appellant No. 1 cannot be considered as a valid deduction in law and the same should not have been made by the Tribunal.

Mr. A. Dutta, learned Counsel appearing for the respondent Nos. 1 and 2 however, did not make any endeavour to contest the settled position of law in his

usual fairness.

4. On consideration of submissions as made by the learned Counsel appearing for the parties, this Court finds it appropriate to set aside the said findings of the Tribunal. Accordingly, the amount of Rs. 81,101 shall form part of the loss of dependency. Thus, the compensation is required to be re-drawn. Thus, the loss of dependency comes to Rs. 13,38,183. With the said sum the appellant will be entitled a sum of Rs. 10,000 for loss of estate, Rs. 5,000 for funeral expenses and Rs. 10,000 for loss of consortium insofar the appellant No. 1 is concerned. The sum comes at Rs. 13,63,183, rounded off at Rs. 13,63,000. With the said amount, a sum of Rs. 1,40,868 would further be added for medical expenses as incurred for treatment of the deceased. Thus total compensation comes to Rs. 14,98,868, rounded of at Rs. 15,00,000. The said amount shall carry interest @ 6% p.a. from the date of filing of the claim petition i.e. from 8th May, 2006 till payment is made. Respondent Nos. 1 and 2 are directed to pay entire awarded amount as modified within a period of two months from today in the Tribunal on equal proportion on deducting the sum, if any, as already paid.

5. For the reasons as aforesaid, this appeal stands allowed to extent as indicated above. There shall be no order as to costs. Send down the LCRs forthwith.