(2016) 06 CAL CK 0003

In the Calcutta High Court

Case No : F.M.A. No. 81 of 1998

Rita Poddar APPELLANT

Vs

New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95

Citation : (2016) 4 ACC 63 : (2016) 4 CalLT 96 : (2016) 3 TAC 592

Hon'ble Judges : Indira Banerjee and Sahidullah Munshi, JJ.

Bench : Division Bench

Advocate : Mr. Asok Kumar Jana and Mr. Krishna Deo Das, Advocates, for the Appellants; Mr. Kamal Krishna Das, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Sahidullah Munshi, J.—This appeal has been filed by the claimants Smt. Rita Poddar, Abatar Poddar and Rakhi Poddar respectively being the widow, minor son and daughter of deceased Ramkrishna Poddar against the judgment and award dated 30th August, 1997, passed by the Additional District Judge, 2nd Court and Judge, Motor Accident Claims Tribunal, Howrah, in M.A.C. Case No. 50 of 1989, passed on the application filed by the claimants under Section 110A of the Motor Vehicles Act, 1939.

2. The claim application was filed praying for compensation on account of death of one Ramkrishna Poddar which occurred on 15th December, 1988 due to a motor accident caused by a truck bearing No. WBI-4340. The said truck dashed the victim who was riding a motor cycle bearing No. WMZ-6829. The truck bearing No. WBI-4340 was covered by a policy of insurance issued by the New India Assurance Company limited, the respondent No. 1 herein. It is claimed by the claimants that the deceased was in service of Food Corporation of India and on the day of accident he was aged about 27 years. In support of the income of the deceased the claimants have filed salary certificate of the deceased which shows that he drew a salary of Rs. 2,220/- (Rupees Two Thousand Two Hundred

Twenty) only, in the month of November, 1988. The claimants claimed for an award to the extent of Rs. 2,83,495/- (Rupees Two Lakh Eighty Three Thousand Four Hundred Ninety Five) only, on account of compensation for the death of Ramkrishna Poddar.

3. The claim application was contested by the New India Assurance Company Limited, the respondent/Insurer, by filing written objection contending, inter alia, that the victim was also responsible owing to his negligence for the accident. It has been mentioned in the written objection that the amount claimed is excessive but with regard to validity of the insurance policy at the relevant time nothing has been mentioned by the Insurer and, therefore, learned Tribunal has held that the validity of the insurance policy has not been denied by the insurance company.

4. In order to prove the claim case the appellant Rita Poddar examined herself as PW 1 and has examined three other witnesses of whom PW 3, who is a Police personnel, is the FIR maker. He stated to have seen the occurrence of the accident. The 4th witness is the Assistant Manager of the Food Corporation of India wherein the victim Ramkrishna Poddar was an employee. PW 1 stated in her evidence that Ramkrishna Poddar, since deceased, was her husband and the father of two minor claimants and also the son of another claimant being Sita Poddar. She deposed that while her husband was going in a motor cycle on 15th December, 1988, a lorry knocked him down over Howrah Bridge and he sustained severe injuries which, ultimately, caused his death. She further deposed that the victim used to draw a salary of Rs. 2,200/- (Rupees Two Thousand Two Hundred) only, at the relevant time when the accident took place and he was about 27 years of age. From her cross-examination it reveals that her mother-in-law, i.e., the mother of the victim resides in a separate house at Calcutta whereas the other claimants reside at Howrah. PW 3, a Sub-Inspector of Police, deposed that on the relevant date and hour he was on-duty at Howrah Bridge and he saw the entire accident with his own eyes. He himself lodged the First Information Report which has been marked Exhibit 3. According to the said witness, accident caused due to fault of the driver of the offending lorry bearing No. WBI-4340. The other witness, PW 4 deposed that the deceased was a messenger-cum-peon in the Food Corporation of India and he also filed an attested copy of his last pay certificate from the Food Corporation of India which shows that he used to draw a salary around Rs. 2,200/- (Rupees Two Thousand Two Hundred) only. The said certificate has been marked Exhibit 1.

5. From the evidence on record it is clearly evident that the deceased Ramkrishna Poddar died out of an accident which was caused due to rash and negligent driving by the offending vehicle being the lorry bearing No. WBI-4340.

6. Learned Tribunal has held that the accident caused due to the negligence of the driver of the said lorry. It has been further found by the learned Tribunal that the insurance policy taken out by the owner of the offending vehicle was valid on the relevant day of accident. The insurance policy was on record before the

learned Tribunal as Exhibit A. the learned Tribunal, on perusal of the records, held that the victim had been drawing gross salary around Rs. 2,200/- (Rupees Two Thousand Two Hundred) only, on the day of the accident and in order to assess the compensation the learned Tribunal held that 50% of the said income was being used by the deceased for the purpose of his family and the rest 50% was being spent for himself. This proposition appears to be wrong and contradictory to various judgments of this Hon''ble Court and of the Hon''ble Apex Court. A low paid employee cannot be expected to have 50% for himself for his personal and living expenses. Therefore, the learned Tribunal ought to have held that the personal and living expenses could not be more than ?rd of the total salary.

7. Deducting 50% from the salary of the deceased, learned Tribunal held that the yearly income of the deceased would be Rs. 12,000/- (Rupees Twelve Thousand) only, per annum which has been multiplied by 16 and the total amount comes to Rs. 1,92,000/- (Rupees One Lakh Ninety Two Thousand) only. Since it has been found by the learned Tribunal that the widow of the deceased got an employment on compassionate ground in the Food Corporation of India on account of the death of the victim and as she was earning salary there from every month, some deductions should be made. The learned Tribunal deducted 50% from the assessed amount of Rs. 1,92,000/- (Rupees One Lakh Ninety Two Thousand) only. According to the learned Tribunal, the award would be Rs. 96,000/- (Rupees Ninety Six Thousand) only.

8. The computation of the award in our view is erroneous and the learned Tribunal ought to have deducted only ?rd from the income of the deceased and thus, the yearly income would have been Rs. 17,600/- (Rupees Seventeen Thousand Six Hundred) only, (Rs. 2,200/- x 12 ? ?rd of annual income). This amount is to be multiplied by 16 as has been done by the learned Tribunal. The amount comes to Rs. 17,600/- x 16 = Rs. 2,81,600/- (Rupees Two Lakh Eighty One Thousand Six Hundred) only.

9. We agree with the learned Tribunal regarding deduction of 50% from the said amount owing to the compassionate employment of the victim''s widow. Therefore, the amount comes to Rs. 1,40,800/- (Rupees One Lakh Forty Thousand Eight Hundred) only. An amount equivalent to ?rd of the salary, i.e., approximately Rs. 733/- x 12 x 16 should be added towards future prospect. Therefore, the total amount comes to Rs. 2,81,600/- (Rupees Two Lakh Eighty One Thousand Six Hundred) only. With the said amount Rs. 2,500/- (Rupees Two Thousand Five Hundred) only, will be added as loss of estate, Rs. 2,000/- (Rupees Two Thousand) only, would be added towards funeral expenses. Thus, the total amount comes to Rs. 2,86,100/- (Rupees Two Lakh Eighty Six Thousand One Hundred) only. In addition to the aforesaid amount the widow separately is entitled to a sum of Rs. 5,000/- (Rupees Five Thousand) only towards loss of consortium.

10. Mr. Das, learned counsel appearing for the Insurance Company, submitted

that the claimants filed the application under Section 110A of the Motor Vehicles Act, 1939 and the claim for compensation under the provisions of 1939 Act is limited by Section 95(2) of the said Act. According to Mr. Das, Section 95 has been amended and as per the amended provision, the liability of the Insurance Company cannot exceed Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only, and, therefore, whatever might be the mode of assessment, the claim must be for a maximum amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only, as limited by the Statute. He relied on a judgment in the case of New India Assurance Company Limited v. C.M. Jaya & Ors. reported in 2002 ACJ 271. The question involved in the cited decision was whether in a case of insurance policy not taking any higher liability by accepting a higher premium in case of payment of compensation to a 3rd party the Insurer would be liable to the extent limited under Section 95(2) of the Motor Vehicles Act, 1939, or the Insurer would be liable to pay the entire amount and he may, ultimately, recover from the insured. Referring to these questions a 5-Judges Bench of the Hon''ble Apex Court, in the case of New India Assurance Company Limited v. C.M. Jaya & Ors. reported in 2002 ACJ 271 held that the liability of the appellant/Insurance Company is limited by Section 95(2) of the 1939 Act in the absence of any specific agreement and payment as per premium to cover 3rd party risk for an amount higher than the statutory limit. In view of such submission made by the learned counsel for the Insurance Company and the clear position of law as laid down by the Hon''ble Apex Court in the Case of C.M. Jaya & Ors. (supra) by which the Hon''ble Apex Court also approved the principle laid down in the case of New India Assurance Co. Ltd. v. Shanti Bai reported in 1995 ACJ 470 (SC) and expressed the opinion that comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to 3rd party risk for an amount higher than the statutory limit in absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit.

11. In view of the aforesaid legal position settled by the Hon''ble Apex Court we are constrained to hold that the claimants are entitled to a compensation not more than a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only, as per the Statute. We, therefore, direct that the Insurance Company will be liable to pay compensation for a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only, to the claimants less the amount already paid, if any, and such amount shall carry interest @ 9% per annum as held by the Hon''ble Supreme Court in the case of Surti Gupta v. United India Insurance Co. & Anr. reported in 2015 SAR (C) 571. Such interest as awarded shall be payable from the date of application till it is paid.

12. The respondent/Insurer is permitted to deposit the entire awarded amount together with interest as indicated above in the learned Tribunal within a period of 45 days from the date of receiving a certified copy of this judgment and order and the learned Tribunal shall distribute the said amount among the claimants in equal share provided the minors have attained majority in the meantime. If the

minors have not attained majority then the appellant No. 1 shall arrange to make a fixed-deposit of the shares of the minors in a nationalised bank for a short term so that the sum can be received by the minors after attaining majority.

13. If any amount has been deposited by the appellant/Insurer in this Hon''ble Court, it will be open for him to withdraw the same together with interest accrued thereon.

14. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.

Indira Banerjee, J. - I agree.