

(2012) 06 PAT CK 0027
In the Patna High Court
Case No : Misc. Appeal No. 182 of 2009

Sabita Kumari @ Sabita Devi and Others	APPELLANT
Vs	
Pankaj Kumar and Others	RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 2(35), 5
Penal Code, 1860 (IPC) — Section 279, 337, 338, 427

Citation : (2013) 2 ACC 8 : (2013) 1 ACC 511 : AIR 2013 Patna 41 : (2012) 4 PLJR 150 : (2012) 3 PLJR 532

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Ratnakar Ambastha and Rajendra Prasad Sah, for the Appellant;
Manoj Kumar . Nos. 1 and 2, M/s. Sanjay Singh and Bimlesh Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—This appeal is directed against the order/judgment and Award dated 20.12.2008 passed in Motor Claim Case No. 66 of 2001 by the 1st Additional District Judge, Munger-cum-Motor Accident Tribunal, Munger. The appellant no. 1 is the widow of the deceased victim whereas appellant nos. 2 and 3 are minor son and daughter of the deceased respectively who have been shown under the guardianship of their mother, i.e., the appellant no. 1.

2. Respondent nos. 1 and 2 are owner and driver of the vehicle respectively whereas respondent nos. 3 and 4 are the officials of the National Insurance Company Limited and respondent no. 5 is the daughter of the deceased and was also one of the claimants before the Tribunal.

3. Brief facts of the case are reproduced as under:

4. Motor Claim Case No. 66/01 has been filed by the appellant nos. 1, 2, 3 as well as the respondent no. 5 being the widow of the deceased victim and minor

son and daughters claiming compensation for accidental death of the husband of the appellant no. 1 as, while he was returning back being a member of the Barat Party from Aura halt near Mokama after attending a marriage ceremony on 1.7.2001. Tata Maxi 407 No. BR-8-4256, had been subjected to accident due to the rash and negligent driving and the said vehicle fell down by the side of the road. The aforesaid Parasnath Das sustained serious injury and died in course of treatment. A first information report bearing Barhiya P.S. Case No. 56/2001 under Sections 279, 337, 338, 427 I.P.C. was lodged by Chaukidar which has been marked as Ext.-1. Charge-sheet was also submitted subsequently which has been marked as Ext. 2. Similarly post mortem report of the concerned doctor is Ext.-4. A petition for interim compensation was also filed u/s 140 of the Motor Vehicles Act (hereinafter referred to as "the Act") which was allowed and Rs. 50,000/- was granted as interim compensation from the order passed by the trial court vide order dated 5.10.2002.

5. It has been claimed that the deceased Parasnath Das was working as Technician Grade-II in Railway Workshop, Jamalpur and was drawing monthly salary Rs. 6,580/-

6. A joint written statement has been filed on behalf of the owner and the driver of the vehicle. Another written statement has been filed on behalf of the Respondents-National Insurance Company Ltd. The owner and the driver of the vehicle have alleged that the claim case would not be maintainable in view of the fact that the deceased Parasnath Das has not died in the accident in question. However, it has been stated that the vehicle was ensured with the National Insurance Company for a period commencing from 6.11.2000 to 5.11.2001, and as such the accident which has occurred on 1.7.2001 was well within the said period. The National Insurance Company has raised an issue that the respondent-opposite party no. 2, Sagar Pd. Singh was not holding valid licence to drive public vehicle within the meaning of Section 2(35) of the Act and the owner of the vehicle has also transgressed the provision of Section 5 of the Act by authorizing the opposite party no. 2 to drive the vehicle without any effective and valid licence. Thus, it has been stated that the Insurance Company would not liable to compensate the claimant. Income of the deceased had also been challenged.

7. On the basis of pleading of the parties following issues have been framed by the Tribunal:--

(i) Whether the case as framed and filed is maintainable and claimants have cause of action to file the case?

(ii) Whether Paras Nath Das died in the said motor vehicle accident on 1.7.2001 vide registration no. Tata Maxi 407 BR-8-4256 which was insured with O.P. Nos. 3 and 4 National Insurance Company?

(iii) Whether the owner of the vehicle has proper route permit to ply the vehicle in public service on the road?

(iv) Are claimants entitled for compensation as claimed alongwith interest and order?

(v) To what relief or reliefs claimants are entitled for?

8. The Tribunal has taken up issue no. 2 at the first instance. On the basis of the evidence led on behalf of the parties it has found that the claimants have been able to establish the fact that Parasnath Das was returning by taxi maxi BR-8-4256 alongwith other persons being member of the Barat Party which overturned on 1.7.2001 at about 3 P.M. near Village-Paharpur. The deceased Parasnath Das sustained severe injury and later on succumbed due to that. He has further held that the driver of the vehicle was having a valid licence and found that the age of the deceased was approximately 45 years at the time of death. His net payable monthly salary was found to be Rs. 4,645/-. After deducting 1/3rd of the salary as personal expenses of the deceased, the Tribunal has found that annual income available for the family would be Rs. 37,176/- and "5" has been chosen as the multiplier for the purpose of grant of compensation. The compensation amount has been calculated as Rs. 1,85,880/- after multiplying to the aforesaid multiplier to the annual income of the deceased. Thus, it has been held that the claimants would be entitled for a compensation of Rs. 1,85,880/- and, besides that, they would also be entitled for funeral expenses of Rs. 2,000/-, Rs. 5,000/- for loss of consortium and for loss of state a further amount of Rs. 2,500/-. Thus, the total amount for which the claimants have been held to be entitled has been calculated as Rs. 1,95,380/-.

9. So far issue nos. 1 and 3 are concerned, the Tribunal has found that neither the owner of the vehicle has stated that he was having any road permit for the concerned route nor have the claimants been able to establish the same. However, in view of the fact that the opposite party nos. 3 and 4, i.e. the official of the Insurance Company have admitted the insurance of the vehicle, it has been held that the claimants would be entitled for compensation as they have valid cause of action. Accordingly, the claim case has been found to be maintainable. However, the National Insurance Company has been held to be entitled for realization of the entire amount of compensation from O.P. No. 1, i.e., the owner of the vehicle. While deciding the issue no. 4 the Tribunal has come to the conclusion that after deducting the already paid interim compensation amount of Rs. 50,000/- from the aforementioned total compensation amount as calculated above the claimants would be entitled for an amount of Rs. 1,45,380/-. The opposite party nos. 3 and 4 had been directed to make payment of amount within two months failing which the claimants would be entitled for an interest at the rate of 9% per annum from the date of the order. Accordingly, the claim case has been allowed in part.

10. Learned Counsel appearing on behalf of the appellants has submitted that gross error has been committed by the Tribunal in calculating the compensation amount inasmuch as the total salary of Rs. 6,480/- has not been taken in account for assessing the annual income of the deceased. Learned Counsel has

also submitted that the deceased has completed 44 years at the time of his death whereas the Tribunal has considered his age to be 45 years and a wrong multiplier, i.e., "5" has been chosen for calculating the compensation amount which would be evident from bare perusal of Section 163A of the Act and the Second Schedule of the Act. Learned Counsel has contended that since completed age of the deceased was 44 years but had not exceeded 45 years, a multiplier of 15 should have been chosen. Learned Counsel has drawn attention of this Court towards the identity card of the deceased, which has been issued by the employer and has been marked as Ext.-3, to show that the date of birth of the deceased victim was 20.4.1957. He has also drawn attention of this Court towards Ext. 5, which is the salary slip of the deceased, to show that the gross wages of the deceased was Rs. 6,580/- out of which there has been deduction towards provident fund of Rs. 350/-, insurance of Rs. 30/- and there has been deduction of some loan amount of Rs. 1,398/- and of D.P. advance of Rs. 150/-. The deductions would come to a total of Rs. 1,934/- and, thus, the net amount which was being paid to the deceased was Rs. 4,646/-. However, Learned Counsel contended that the total salary of the petitioner was Rs. 6,580/- and such deductions of Rs. 1,934/- should not have been taken into account and deducted from the salary for assessing net annual income of the deceased. Learned Counsel has placed reliance upon a decision of the Apex Court in *Shyamwati Sharma and Others vs. Karam Singh and Others* [2011] Acci. C.R. 9 (S.C.):[2010(4) PLJR (SC)274].

11. Learned Counsel has further submitted that the reason for selecting of lower multiplier also appears to be due to certain subsequent development during the pendency of the claim case. The Court has considered that the claimant no. 1 has got employment on compassionate ground and was drawing a salary of Rs. 4,000/- per month and that apart, she was also receiving pension of Rs. 3,000/-. Thus, her monthly income was Rs. 7,000/-. She had also received compensation of Rs. 1,50,000/- from the Railway Department after the death of her husband. Therefore, it has come to the conclusion that the financial condition has sufficiently improved and as such lower multiplier of 5 has been chosen.

12. Learned Counsel submits that the idea is wholly improper and illegal as subsequent development could not have been taken into account for choosing a multiplier. In fact only age of the deceased should have taken into account for choosing a corresponding multiplier for assessing the loss of dependency at the time of death of the victim.

13. Learned Counsel for the respondents on the other hand submitted that in view of the fact that the financial condition of the family has improved after the death of the victim as the appellant no. 1 had got appointment on compassionate ground and was also receiving pension and that apart the family has also received Rs. 1,50,000/- as compensation from the Railway Department, the multiplier chosen is absolutely correct and the Insurance Company should not be compelled to pay an amount other than the amount that has been assessed by

the Tribunal. Learned Counsel has submitted that while determining the multiplier the age of the victim or the claimant, whichever is higher has to be taken into account and as such there is no illegality committed by the Tribunal. Learned Counsel appearing for the respondent nos. 1 and 2 has also adopted almost similar line.

14. Upon hearing the rival submission, in the opinion of this Court, following points have emerged for consideration by this Court:--

(I) Whether the Tribunal was correct in considering the monthly salary of Rs. 4,645/- after deduction of Rs. 1,934/-, which was being deducted from the salary of the deceased by the employer, for assessing of the net annual income?

(II) Whether the subsequent development during the pendency of the claim case, for example, grant of appointment to the widow of the deceased on compassionate ground, grant of pension and some compensation by the Railway Department, should have been taken into account while choosing a proper multiplier?

(III) Whether the multiplier of 5 chosen by the Tribunal for calculating the loss of dependency was proper and in accordance with law?

Point No.-1

15. In the salary slip, which is Ext. 5, the gross salary of the deceased has been shown as Rs. 6,580/- for the month of May 2001 out of which certain deductions amounting to Rs. 1,934/- were made. The net salary of Rs. 4,646/- after aforesaid deduction has been taken into consideration by the Tribunal for assessing net annual income. However, this issue is no longer res integra as the Apex Court in *Shyamawati Sharma & Ors.* (supra) has already held that while assessing the income of the deceased any deductions shown in salary certificate towards GPF, life insurance premium or repayments of loans should not be excluded from income. The deduction towards income tax/surcharge alone should only be excluded for that purpose.

16. In above view of the matter, since no deduction towards income tax surcharge has been shown in Ext.-5, in my considered opinion, the other deductions including GPF and loan repayment as well as D.P. advance etc. should not have been excluded for calculating the net income of the deceased. Thus, I hold that such exclusion by the Tribunal was incorrect and the net income of the deceased is assessed at Rs. 6,580/- per month.

Point No.-II

17. The Tribunal has considered the subsequent development during the pendency of the claim case, for example, grant of appointment on compassionate ground to the widow and payment of other benefits including pension as well as compensation by the Railway authority. In the opinion of this Court deduction for gratuity, Provident Fund and income of the widow and also the income from her

employment on compassionate ground for selection of multiplier and for assessment of compensation would be impermissible. What is to be assessed is the compensation for deprivation of benefit to the claimants which they would have been entitled to had the deceased been alive. Therefore, what is to be seen would be the loss of dependency at the time of the death of the victim and not the subsequent development which has taken place during the pendency of the claim case. Reference is made in this regard to the decision of various courts such as *The Branch Manager, The Oriental Fire and General Insurance Co. Ltd. Vs. Laxmi Patra and Others*, , *Charu Barman and Others Vs. Satya Narayan Jiwanram and Others*, and *Andhra Pradesh State Road Transport Corporation Vs. G. Jana Bai and Others*, .

18. Thus, it is held that such consideration by the Tribunal was improper and impermissible.

Point No.-III

19. From perusal of the order it appears that no reason or basis have been given or explained for choosing a multiplier of 5. For such selection only reason that appears to have been given is that the Tribunal has been empowered under the Act to grant compensation and not for giving bonanza or bundle of gift to the family of deceased. While doing so he has considered subsequent employment of the appellant no. 1 on compassionate ground as well as pension and some compensation amount that has been received by the widow. However, I have already held that such approach would not be permissible. Thus, the approach of choosing "multiplier" by the Tribunal appears to be wholly misconceived and improper. It ought to have assessed the age of the deceased victim or age of the claimant, whichever is higher, in accordance with the observation of the Apex Court in *Tamil Nadu State Transport Corporation Ltd. vs. S. Rajapriya & Ors.*, II (2005) ACC 476 (SC)476 and other relevant factors and then should have taken a decision.

20. So far the age of victim is concerned the Tribunal has assessed it to be of about 45 years. However, from the Ext.-3, which is identity card issued by the employer of the deceased, it appears that the date of birth is 20.4.1957 and, thus, at the time of death it appears that the deceased had approximately completed 44 years 2 months. In the affidavit portion of the memorandum of appeal the appellant no. 1 has disclosed his age 40 years at the time of filing of the appeal, thus, it could be safely construed that she was of an age lower than the age of the deceased at the time of his death.

21. In above view of the matter, as per the second schedule of the Act, the victim can be kept in the group of above 44 years but not more than 45 years. In such case a proper multiplier would be 15. Thus, it is held that proper multiplier for assessing the loss of dependency would be 15 and not what has been chosen by the Tribunal. I have already held that the net salary of the deceased has wrongly been assessed to be Rs. 4,646/- by the Tribunal and proper salary would

be Rs. 6,580/- as it does not appear that any amount or income tax and surcharge was being deducted from the salary or any amount was being invested for taking deductions under the Income Tax Law.

22. In above view of the matter, considering the monthly salary of the victim Rs. 6,580/- and after deducting 1/3rd therefrom towards the personal expenses of the deceased, the net monthly amount available for the family would be Rs. 6580/- Rs. 2193.33 = Rs. 4386.67/- Thus, the annual net income of the victim would come to Rs. 52,640/- after rounding up the figure. For calculating compensation amount, the aforesaid amount has to be multiplied by the multiplier of 15 chosen as above which would come Rs. 7,89,600/-. Thus, it is held that the claimants would be entitled for the aforesaid compensation amount and that apart they would also be entitled for funeral expenses of Rs. 2,000/-, Rs. 5,000/- for consortium and Rs. 2,500/- for loss of estate as assessed by the Tribunal. Thus, the total compensation amount would come to Rs. 7,99,100/-. Accordingly, this appeal is allowed to the extent as indicated above and the compensation amount enhanced as above. However, Rs. 50,000/- already paid to the claimant by way of interim compensation has to be deducted from the aforesaid amount, thus, the final amount would come to Rs. 7,49,100/-. The claimants would be entitled for an interest @ 9% per annum from the date of this order upon the amount calculated after deducting the amount that has already been paid by the Insurance Company. If the compensation awarded by the Tribunal has already been paid then the claimants would be entitled for the interest @ 9% from the date of order upon the balance amount that has been enhanced as above. However, if even the amount awarded by the Tribunal is also yet to be paid then in that case the appellants would be entitled for an interest @ 9% upon the whole amount of Rs. 7,49,100/- from the date of the order of the Tribunal.