
(2004) 06 CAL CK 0063
In the Calcutta High Court
Case No : F.M.A. No. 528 of 2003

Sahjahan Khatoon and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Citation : (2006) ACJ 2015

Hon'ble Judges : P.K. Samanta, J;Maharaj Sinha, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, for the Appellant;Narayan Roy, for the Respondent

Judgement

P.K. Samanta and Maharaj Sinha, JJ.—The claimants are the appellants herein in this appeal which arises out of the judgment and award dated 20.2.2003 passed in M.A.C. Case No. 141 of 2001 by the Motor Accidents Claims Tribunal, First Court, Asansol.

2. In this appeal, the only question that has been raised on behalf of the claimants- appellants is in relation to the computation of compensation. In particular, it was con- tended on behalf of claimants-appellants that the Tribunal has committed wrong by computing such compensation by taking into account the net income of the victim.

3. It appears from Exh. 5 that at relevant point of time the victim used to draw a gross salary of Rs. 10,464.94 per month, Claims Tribunal has taken into account the net monthly salary of Rs. 7,490 of the victim for the purpose of such computation. Furthermore, Claims Tribunal has made a further deduction of Rs. 1,490 from the said net monthly salary and has, therefore, determined the amount of compensation, on the basis of monthly income of the deceased at Rs. 6,000 only on average.

4. The Supreme Court in its decision in General Manager, General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , has not only estimated the loss of dependency on the basis of the

gross income of the victim but also by taking into account the possible factor of advancement in career of the victim in future had he been alive. The Supreme Court decision in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , is also on the same line.

5. However, on behalf of the insurer respondent, the decision of the Supreme Court in Asha and Others Vs. United India Insurance Co. Ltd. and Another, , has been referred to in support of the contention that for the purpose of computation of compensation, the net income of the victim should be taken into account. We have considered the said judgment in detail and we do not find any applicability of the same to the facts and circumstances of the present case. In the said case before the Supreme Court, the particular issue as to whether the gross salary should be taken into account for the purpose of computation of compensation was not raised. The Supreme Court merely refused to interfere with the quantum of compensation as determined by the High Court on the basis of the net salary drawn by the victim. The said decision, therefore, is not on the particular question as involved in the case in hand.

6. In these state of affairs and more particularly, in view of the discussion as above, we are of the view that the monthly salary of the victim, for the purpose of computation of compensation, should be taken as Rs. 10,000 by taking into account the possible factor of advancement in future career of the victim in the event of his being alive. The application of particular multiplier by the Claims Tribunal has not been questioned. Therefore, upon making necessary deduction of 1/3rd amount on account of personal expenses of the victim, the total compensation would come to Rs. 8,80,000. Since it is not disputed that claimants-appellants have already received Rs. 5,37,500 as awarded by the Claims Tribunal, we hold that claimants-appellants shall be entitled to receive the balance sum of Rs. 3,42,500 along with an interest at the rate of 6 per cent per annum from the date of filing of the application till payment. Each of the claimants shall get the aforesaid sum in equal proportions. The judgment and award of the Claims Tribunal is thus modified.

7. The insurer respondent is directed to draw separate account payee cheques in favour of each of the claimants-appellants and to deposit the same with the Claims Tribunal within a period of 4 weeks from date. The cheque in favour of the claimant-appellant No. 2 who is a minor, shall be handed over to the claimant-appellant No. 1 who in her turn will deposit the same with any nationalised bank in a short-term fixed deposit which shall be renewed from time to time till the claimant-appellant No. 2 attains majority. The said claimant-appellant No. 2 upon attaining majority will be entitled to withdraw the same. The claimant-appellant No. 1 upon production of the document relating to the making of the fixed deposit as above shall be entitled to receive the cheque drawn in her favour in respect of her share.

8. The lower court records be sent down to the Claims Tribunal immediately by a special messenger at the cost of appellants. Such cost be put in by one week

from date.

9. The appeal is accordingly disposed of. However, there will be no Order as to costs. If urgent xerox certified copy of this Order is applied for by the parties, the same should be given expeditiously.