

(2015) 06 TP CK 0046
In the Tripura High Court
Case No : MAC App. 35 and 27 of 2011

Satya Ranjan Debbarma and Others

APPELLANT

Vs

Swapna Roy and Others

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Citation : (2015) 06 TP CK 0046

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : S. Saha, for the Appellant; D.K. Biswas, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, J.—Both the appeals are being disposed of by a common judgment since they arise out of the same accident and virtually identical awards.

2. The appeal by the claimants is directed against the award dated 06.01.2011 passed by the learned Motor Accident Claims Tribunal, North Tripura, Kailashahar awarding a sum of Rs. 1,22,000/- in favour of the claimant. Two grounds have been raised before me. The first is that the amount of compensation is very much on the lower side. The second ground is that the insurance company has wrongly been exonerated from paying the awarded amount. One appeal has been filed by the owner also praying that the liability be shifted on the insurance company.

3. The undisputed facts are that the deceased was aged about 18 years. The claimants are the mother and a minor brother. It is alleged that the deceased was the sole bread earner of the family as he was imparting private tuitions and also doing work of tailoring and his monthly income was Rs. 6,000/-. The learned Court below rightly held that there is no proof with regard to the work which the deceased was doing. Even having held so, the deceased was an educated person. He was a matriculate. He was more than 18 years old and therefore, he would be

expected to earn a reasonable amount of money.

4. This Court follows two methods while assessing compensation. In those cases where the claimants are parents and the deceased was unmarried, 50% is deducted for the personal expenses of the deceased and in such eventuality, the multiplier is applied by taking into consideration the age of the deceased. In case, the multiplier is to be applied by taking into consideration the age of the claimants, then only 1/3rd should be deducted for the personal expenses of the deceased.

5. The accident took place in the year 2009 and even in the year 2009 a daily waged worker would have earned Rs. 125/- a day. Keeping in view the future prospects, I assess the income at Rs. 4,500/- per month. 50% is deducted for the personal expenses of the deceased and the balance comes to Rs. 2,250/- per month or Rs. 27,000/- per year. Since the deceased was only 18 years old, the multiplier of 18 has to be followed and the Compensation works out to Rs. 4,86,000/-. In addition thereto the claimant is awarded to Rs. 14,000/- for funeral expenses and Rs. 50,000/- for loss of her son. The total award is assessed at Rs. 5,50,000/-. The learned Tribunal erred in deducting two third for the personal expenses of the deceased and also in applying the multiplier keeping in view the age of the mother.

6. Now comes the question as to who is liable to pay the compensation. According to Mr. P. Gautam, learned counsel, the liability of the insurance company is limited to Rs. 92,500/- per passenger as per the terms of the policy. On the other hand, it is urged by Mr. D.K. Biswas, learned counsel that in view of the IRDA guidelines and the judgment of the Delhi High Court in Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, (2011) ACJ 1415 : (2009) ILR Delhi 375 Supp as well as the judgment of a learned Single Judge of the Gauhati High Court in MAC APP 14 of 2009 (The United India Insurance Company Limited vs. Smt. Uma Kalai (Debbarma) and ors., the insurance company in the case of a package/comprehensive policy must pay the entire amount.

7. On the other hand, my attention has been drawn to the judgment of the Apex Court in National Insurance Company Ltd. Vs. Balakrishnan and Another, (2013) ACJ 199 : AIR 2013 SC 473 : (2013) 116 CLT 156 : (2013) 170 PLR 1 : (2013) 1 RCR(Civil) 762 : (2012) 11 SCALE 122 : (2013) 1 SCC 731 , wherein though the Supreme Court approved the law laid down in the Delhi High Court judgment, but went on to hold that merely because the policy is termed as a package or comprehensive policy is not sufficient to hold that it is such a policy but the terms and conditions of the policy will have to consider.

8. Reference may be made to Paras 22 and 23 of the judgment of the Apex Court in Balakrishnan's (supra) case, which reads as follows:-

"22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an 'Act Policy' or ?

comprehensive/package Policy?. There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a ?comprehensive policy? but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a ?package policy? to cover the liability of an occupant in a car.

23. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the Tribunal as regards the liability of the insurer and remit the matter to the Tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a ?Comprehensive/Package Policy?, the liability would be fastened on the insurer. As far as other findings recorded by the Tribunal and affirmed by the High Court are concerned, they remain undisturbed."

9. Similar view has been taken by the Supreme Court in *Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and Others*, (2013) ACJ 321 : AIR 2013 SC 483 : (2013) 170 PLR 17 : (2013) 1 RCR(Civil) 603 : (2012) 11 SCALE 134 , wherein also the matter was remitted to the Tribunal to decide the question as to who is liable in terms of the policy and the IRDA. As far as the present case is concerned before the Tribunal neither the claimant nor the owner nor the insurance company led any evidence as to the terms of the policy. Therefore, I feel that following the judgment in *Balakrishnan's* (supra) case it would be proper to remit the case back to the Tribunal only for the purpose of fixing the liability. Since the insurance company even as per the terms of the policy is liable to pay Rs. 92,500/-, it is directed to deposit a sum of Rs. 92,500/- (Rupees Ninety two thousand five hundred) before the Tribunal within a period of 3 (three) months from today along with interest @ 9% from the date of filing of the claim petition till payment of the amount.

10. The parties are directed to appear before the learned Tribunal on 9th July, 2015 and the Tribunal may give the parties including insurance company opportunity approving the terms of the policy as well as the IRDA circulars and thereafter, shall decide the matter in accordance with law. As far as the quantum is concerned that shall not be gone into by the Tribunal.

11. The appeals are disposed of in the aforesaid terms.

12. Send down the LCRs forthwith.