

(2009) 04 PAT CK 0138
In the Patna High Court
Case No : M.A. No. 160 of 2003

Sazra Khatoon @ Sajda Khatoon and Others	APPELLANT
Vs	
The Oriental Insurance Co. Ltd. and Others	RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, 166, 170, 173

Citation : (2009) 3 PLJR 35

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Ravindra Kumar Sinha, for the Appellant; Mukteshwar Pd. Singh for the Respondent No. 1 and Mr. Abhay Kr. Shambhu for the Respondents No. 3, 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the appellants as well as for the respondents No. 1, 3, 4 & 5. By the order dated 18.2.2008, the appellants had been exempted from serving fresh notice on respondent No. 2, who had not contested the claim before the Tribunal.

2. This appeal is being heard and disposed of at this stage upon the joint request made on behalf of the parties aforesaid.

3. By filing this appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred as "the Act"), the claimants-appellants have challenged the amount of compensation awarded by the Seventh Additional District Judge-cum-Motor Accident Claims Tribunal, Gaya in M.A.C. Case Nos. 4/2000/22/99.

4. By the impugned order and award dated 31.3.2002 and 7.4.2003 respectively, the claimants-appellants have been awarded a sum of Rs. Three lacs, wherefrom an amount of Rs. 59,995/- has been ordered to be deducted as the amount aforesaid has already been paid by the Insurance Company to the claimants. That apart, interest at the rate of 9% per annum from the date of preparation of

the award has also been allowed.

5. According to the claimants-appellants, the compensation awarded is on the lower side and hence need to be enhanced. Thus, this appeal has been preferred by the appellants only for the purpose of enhancement of the compensation amount awarded by the Tribunal.

6. Shorn of unnecessary details, the short facts of the case are as follows:--

7. The deceased, Md. Naseem Mian, while he was driving a Maruti Van, bearing Registration No. D.N. 5172, and was going from Sherghatti to Hazaribagh alongwith the friend of the owner of the aforesaid Maruti Van, met with an accident with a Truck bearing Registration No. HR-47-3053 near Danuyaghati. The aforesaid Truck was coming from opposite direction very rashly and negligently, and when the driver of the truck all of a sudden saw a ditch on the road and tried his best to stop the truck but his attempt failed, as a result of which, the truck turned down on the wrong side and dashed the aforesaid Maruti Van causing death of the driver of the Van on the spot and injuries to the friend of the owner of the Van, who was also traveling on same Maruti Van. Upon information, Chauparan P.S. Case No. 117/93 was registered against the driver of the truck.

8. Appellant No. 1 is the widow of the deceased whereas Appellants No. 2 & 3 are the father and the mother of the deceased respectively. The daughters and son of the deceased have been implicated as Respondents No. 3 to 5.

9. Initially, the claim was for Rs. 59,995/- only but later on the claimants were allowed to amend the plaint and after such amendment, the claimed amount came to be a sum of Rs. Three lacs.

10. Respondent No. 1, the Oriental Insurance Company Ltd. filed a written statement and contested the claim case. The owner of the truck, who has implicated as Respondent No. 2 herein, did not appear and contest the claim case. The Tribunal concerned framed the following issue:--

"I. Whether the accident took place due to rash and negligent driving of the driver of the truck bearing No. HR-47/ 3053 and whether Naseem Mian died in the said accident?

II. Whether the vehicle was insured with the O.P. No. 1?

III. Whether these applicants are entitled to get compensation, if so, to what extent?"

11. On the basis of the materials available on record and the evidence led on behalf of the claimants, it has been held by the Tribunal that on the point of rash and negligent driving by the driver of the truck in question, there is no opposition by the Insurance Company and, thus, it is admitted fact that the accident took place due to rash and negligent driving of the truck and the driver of the Maruti Van in question, Md. Naseem Main died in such accident. The aforesaid fact is

also corroborated by the evidence led on behalf of the claimants. Further, on the basis of the materials on record supported by the evidence, the Tribunal came to the conclusion that the monthly income of the deceased was Rs. 3,000/- per month, thus, the Tribunal assessed the annual income to the tune of Rs. 36,000/- which, on deduction of the one third amount towards the personal expenses of the deceased, came to the tune of Rs, 24,000/-. The age of the deceased has been determined as 35 years. The Tribunal, in the facts and circumstances of the case, selected the multiplier of 18 and, thus, on calculation came to the conclusion that the claimants are entitled for Rs. 4,32,000/-, but since the appellants have raised a claim of Rs. Three lacs only, the Tribunal found Rs. Three lacs as just and proper compensation and awarded the same in favour of the claimants. An amount of Rs. 59,995/- was directed to be deducted as the same had already been paid by the Insurance Company to the claimants. The Tribunal further directed for payment of interest at the rate of 9% per annum from the date of preparation of award.

12. Learned counsel for the appellants has raised only one issue in this appeal.

13. According to the learned counsel for the appellants, the Tribunal, having determined the amount of compensation of Rs. 4,32,000/- on the basis of the evidence on record, was not justified in reducing the same and holding that Rs. Three lacs only was the just and proper compensation as the claim is only up to the aforesaid extent. He contends that under the provisions of the Act there is no restriction that compensation could be awarded only up to the amount claimed by the claimants.

14. Learned counsel placed reliance upon a decision of the Apex Court in Nagappa vs. Gurudayal Singh & Ors., reported in 2003(1) PLJR (SC)222.

15. Submission is that in the aforesaid decision, the Apex Court has held that there is no bar for the Claims Tribunal to award compensation in excess than the amount which has been claimed, if the evidence on record is sufficient to show that the claimants are genuinely entitled for the enhanced amount.

16. I find force into the submissions made on behalf of the appellants. The Apex Court in Nagappa vs. Gurudayal Singh & Ors. (supra) had held that in a case where there is evidence on record to show that the claimant is entitled for larger amount than the claimed amount, the Tribunal could award such an amount. Further, in cases where there is no such evidence on record, the Tribunal may even permit such amendment to be made and may allow such issue to be raised as an additional issue and may give an opportunity to the parties to produce relevant evidence in this regard. It would be apt to quote a few relevant passages of the aforesaid decision of the Apex Court, which are as under:--

"7. Firstly, under the provisions of Motor Vehicle Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that claimant is

entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is-it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence, x x x x x."

"12. Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim. Form 63 of the Karnataka Motor Vehicles Rules, 1989, which is for filing an application for compensation, does not provide that claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates."

"15. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence."

"20. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "Just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under subsection (4) of Section 166, even report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition."

17. In the case in hand, the Tribunal has come to the conclusion that the claimants are entitled for Rs. 4,32,000/- but since they have claimed only Rs. Three lacs, therefore, it has come to the conclusion that the just and proper amount of compensation would be Rs. Three lacs only. Learned counsel for the Respondent No. 1 could not refute the aforesaid proposition raised by the appellants.

18. In view of the aforesaid decision of the Apex -Court, it is held that the Tribunal was wrong in reducing the amount of compensation as on appreciation of evidence and materials on record it has come to the conclusion that the claimants are entitled for Rs. 4,32,000/-.

19. However, it has been contended on behalf of the Insurance Company that the multiplier selected by the Tribunal was wrong. Learned counsel brought the

attention of this Court to the Second Schedule of the Act, which is the Schedule for Compensation for Third Party Accident/Injury Cases Claims. According to the Schedule, if the age of the victim is above 30 years but not exceeding 35 years then the multiplier would be 17 whereas the Tribunal has selected a multiplier of 18. In reply, learned counsel for the Appellants submits that though the Insurance Company has not filed any appeal and they cannot challenge the amount of compensation unless a leave has been granted by the Tribunal u/s 170 of the Act to contest the claim on all grounds that are available to the claimants, still he submits that even if the multiplier of 17 is selected, the total amount for compensation will come to Rs. 4,08,000/-, which would also be acceptable to the appellants.

20. Having considered the rival submission, this Court deems it proper to enhance the compensation amount up to Rs. 4,08,000/- on the basis of selecting the multiplier of 17, as per the following calculations:--

- i. Monthly income as assessed by the Tribunal-Rs.3,000/- per month.
- ii. Annual Income on the basis of the aforesaid monthly income-Rs. 36,000/- per annum.
- iii. Annual income after deducting one third as personal expenses-Rs. 36,000--Rs. 12,000=Rs. 24,000/-.
- iv. Compensation amount after choosing multiplier of 17--Rs. 24,000 x 17 = Rs. 4,08,000/-.

21. Thus, the appellants are held to be entitled for a total compensation of Rs. 4,08,000/- by way of compensation for the death of the deceased, Md. Naseem Mian. The enhanced amount will be payable alongwith the interest as has been awarded by the impugned Tribunal. This appeal is allowed with the aforesaid directions and the judgment and award of the Claims Tribunal is modified to the extent aforesaid.