(2023) 06 OHC CK 0049

In the Orissa High Court

Case No : MACA Nos. 613 & 524 Of 2019

Sr. Divisional Manager M/s New India Assurance Co. Ltd	APPELLANT
Vs	
Sabita Dandasena and Others	RESPONDENT

Date of Decision : 01-06-2023

Acts Referred:

Citation : (2023) 06 OHC CK 0049

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : G.P. Dutta, D.C. Dey

Final Decision : Dismissed

Judgement

B.P. Routray, J.

1. Both the appeals, one (MACA No.524 of 2019) filed by the claimants and the other (MACA No.613 of 2019) filed by the insurance company, are against the same impugned award and as such are heard together and disposed of by this common judgment.

2. The claimants, who are the wife and children of the deceased namely Bishnu Charan Dandasena have filed MAC Case No.831 of 2016/221 of 2017 for death of the deceased in a motor vehicular accident dated 26th October 2015. Their case is that while the deceased was going to office in his Activa scooter, the offending truck bearing registration number AP-35-X-8799 coming from behind in rash and negligent manner dashed him causing his death. The deceased was serving as the Divisional Manager, LIC of India, Sambalpur. The tribunal upon adjudication directed for payment of compensation of Rs.83,46,479/- along with interest @ 6% per annum for the date of filing of the claim application, i.e. 7th December, 2016 in favour of the claimants.

3. The involvement of the offending truck and negligence on the part of its driver are though not disputed before this court, but the challenges are mainly on the

quantum of compensation. The claimants have prayed for enhancement of the same whereas the insurer has prayed to reduce it. According to the insurer, the daughter of the deceased is now receiving Rs.23,700/- per month from rehabilitation appointment and the widow is getting family pension of Rs.35,000/- per month and therefore, such amounts received by the claimants are liable to be adjusted from the loss of dependency to disentitle them from getting benefits of future prospects. On the other hand the claimants are urging against deduction of Rs.20,00,000/- received by them towards Group Personal Accident Policy. As per the claimants such amount received from the employer of the deceased is not liable for deduction.

4. The deceased was 59 years old on the date of death and the tribunal determined his annual income at Rs.18,51,190/- taking into account the income mentioned in Form-16 for the Financial Year 2015-16. No dispute is raised with regard to income of the deceased. As stated earlier, the entire dispute is on deduction of such amount received towards Group Personal Accident Policy and addition of future prospect.

5. First dealing with the contentions raised by the Insurance Company that, future prospect is not liable to be added to the income of the deceased, the same are found without substance. What is submitted by the insurer that family pension amount as well as salary received from rehabilitation employment by the widow and daughter respectively would deprive them from the benefits of addition of future prospect is an inconceivable argument. There is no merit in this submission. This would not disentitle them from getting the benefits of future prospects. Similarly, the submissions made by the claimants against deduction of Rs.20,00,000/- are also meritless. Admittedly, a sum of Rs.20,00,000/- was paid to the widow of the deceased towards Group Personal Accident Policy. The insurer examined O.P.W.1, the Administrative Officer of LIC of India at Sambalpur, and produced the document (Ext.B) in this regard, which is not disputed by the claimants. Said O.P.W.1 has stated that the premium for the policy is not paid or deducted from the salary of the concerned employee.

6. The position of law to answer the contentions of both parties would be clear from following discussions.

It has been observed by the Hon’ble Supreme Court in Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 that, family pension is all by the employee for the benefit of the family in the form of his contribution in terms of service conditions and heirs receive family pension even otherwise than the accidental death. In the case of United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281, it is expounded that there must be some co-relation between the amount received and the accidental death. In the said case the deceased was a doctor and upon his death the widow received an amount of $.2,50,000/- on account of life insurance policies of the deceased . The relevant observations of the Supreme Court are as follows:-

“36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.”

7. In Sebastiani Lakra and Others v. National Insurance Company Ltd., 2018 (4) TAC 367 (SC), the Supreme Court taking note of various other decisions including Helen C. Rebello and Patricia Jean Mahajan (supra) have held as follows:-

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants / dependents are entitled to ‘just compensation’ under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tort? feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Perry v. Cleaver, 1969 A.C.J. 363 the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tort?feasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.”

8. From the principles expounded in the above stated cases, neither party does have any merit in their contentions. It is to be reiterated here that the amount of Rs.20,00,000/- received by the claimants towards Group Personal Accident Policy being meant for any accidental death of the employee for which the employee did not pay the premium, the tribunal is right in his approach to deduct the same from loss of dependency. As such, this court does not find any merit in favour of either party to interfere with the impugned award and both the appeals are

dismissed accordingly.

9. The Appellant in MACA No.613 of 2019, i.e. New India Assurance Company Ltd. is directed to deposit the entire compensation amount along with interest as per the direction of the tribunal within a period of two months from today, which shall be disbursed to the claimants on same terms and proportion contained in the impugned judgment.

10. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made by the insurance company (Appellant in MACA No.613 of 2019) before this Court with accrued interest thereon shall be refunded to the Insurance Company.

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