

(2011) 12 GAU CK 0018
In the Gauhati High Court
Case No : MAC App. No. 94 of 2000

Sri. Himangsu Choudhury and Smt. Bani Choudhury	APPELLANT
Vs	
Sri. Sushil Kumar Agarwal and National Insurance Company Ltd.	RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2011) 12 GAU CK 0018

Hon'ble Judges : S.C. Dass, J

Bench : Single Bench

Advocate : B. Debnath and Mr. Somik Deb, for the Appellant; P. Gautam, Advocate, Ms. S. Das, Advocate and Ms. S. Roy, for the Respondent

Judgement

S.C. Dass

1. The appellants, named above, set the law in motion, presenting a Memorandum of Appeal, u/s 173 of M.V. Act, 1988, against the judgment and award dated 13.07.2000, passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, in Case No. TS (MAC) 452 of 1996.
2. Heard learned counsel, Mr. Somik Deb for the appellants and learned counsel, Mr. P. Gautam for respondent No.2.
3. The fact, necessary for disposal of the appeal, in short, is that Babul Choudhury, unmarried young son of the appellants, aged about 25 years, was a professional driver of heavy motor vehicles and on 23.06.1996, he was driving truck vehicle bearing No.AS-01-5137, belonged to respondent No.1, and was on way to Guwahati from Meghalaya, carrying load of coal and at about 3.30 pm, the vehicle met an accident on N.H. 44 at a place, named Umran Diary under Umsning Outpost, Meghalaya, and the vehicle fell on the roadside ditch, and as a result, Bablu Choudhury received fatal injury and he was taken to Civil Hospital, Meghalaya, where he was declared dead. The deceased used to earn Rs.3,000/-

per month and for the untimely death of the deceased, the appellant-petitioners suffered pain and sufferings as well as loss of income of the deceased, on which they were dependent. The appellant- petitioners presented the petition, u/s 163(A) of the M.V. Act and prayed for granting them compensation of Rs.4,51,500/-, as per Second Schedule of M.V. Act.

4. Respondent No.1, the owner of the vehicle, admitted the accident but stated that the accident occurred for the negligence and callousness of the deceased, and therefore, the appellant-petitioners are not entitled to get any compensation. It was also stated that the vehicle was insured with the National Insurance Company Ltd., covering the risk on the date of the accident, and so liability of payment of compensation, if any, should be borne by the Insurance Company. Respondent No.2, the National Insurance Company Ltd. also contested the suit by filing written statement, denying all the averments made in the claim petition but did not specifically deny the factum of insurance of the vehicle, covering the risk on the date of accident.

5. On perusal of records, I find that the Tribunal framed the following issues for determination of compensation:-

1. Whether deceased Bablu Choudhury died in a vehicular accident on 23.6.96 at about 3-30 p.m. at Umran Diary NH-44 due to rash and negligent driving of vehicle No.AS-01/5137(Truck)?

2. Whether the petitioner is entitled to get compensation, if so what should be the amount of compensation and who shall be held liable for payment?

6. The appellant-petitioner No.2 examined herself as PW.1 and in support of their case also examined another witness, namely, PW.2, Sri Swapan Sarkar. They also proved some documents in support of their case, which was marked as Exbt.1 series.

7. Respondents adduced no evidence to controvert the evidence adduced by the appellant-petitioners. Respondent No.1 produced the documents of the vehicle, which was considered by the Tribunal.

8. By the impugned judgment dated 13.07.2000, the Tribunal awarded Rs.2,22,000/- as compensation.

9. Appearing for the appellant-petitioners, learned counsel, Mr. Deb has submitted that the appellants presented the petition, u/s 163(A) of the M.V. Act and claimed compensation as per the structured formula, prescribed in the Second Schedule of the M.V. Act, 1988. Assailing the award made by the Tribunal, Mr. Deb, drawing the attention of this Court to the averments made in the claim petition and the averments made by the respondents in their written statements and the evidence on record, has pointed out that the income of the deceased was Rs.3,000/-, as categorically mentioned in the claim petition, which was not disputed by the owner of the vehicle i.e. respondent No.1 and supported by evidence of PWs.1 and 2, there was no scope left for the Tribunal to fix a

different income than that what was stated by the appellant-petitioners in the evidence on record and the decision of the Tribunal that the monthly income of the deceased was Rs.2,500/-, was based on no evidence and there was no scope for the Tribunal to reduce the monthly income of the deceased from Rs.3,000/- to Rs.2,500/-.

In para 9 of the judgment, I find, the Tribunal considered the evidence but abruptly came to the finding, based on no evidence at all, that the income of the deceased was Rs.2,500/-. This decision of the Tribunal, since based on no evidence, is liable to be interfered and I hold that on the basis of pleadings and evidence on record, it was clearly established that the income of the deceased was Rs.3,000/- per month at the time of his death.

10. The deceased was aged 25 years, which was not disputed. The Tribunal, taking into consideration the age of the appellant-petitioners, applied a multiplier of 11(eleven). Learned counsel, Mr. Deb has submitted that in a petition u/s 163(A) of M.V. Act, the Tribunal had no scope to apply any other method, except that of applying the structured formula for determining the compensation, taking into consideration the age of the deceased at the time of the accident. According to learned counsel, in view of the non-obstinate clause, the Tribunal was not justified in applying the multiplier, considering the age of the appellant-petitioners for determining the compensation and referring to the law laid down by the Hon'ble Apex Court in the case of Sarla Verma vs. Delhi Transport Corporation, reported in AIR 2009 SCW 4992, learned counsel submitted that the multiplier should be as per the 2nd Schedule of M.V. Act, taking into consideration the age of the deceased at the time of the accident. On the other hand, learned counsel, Mr. Gautam, appearing for respondent No.2, countered the argument referring to the same case law and submitted that the multiplier in the case of the appellant-petitioners was rightly applied by the Tribunal, taking into consideration the age of the appellant- petitioners and further submitted that 50% of income of the deceased was bound to be deducted for personal and living expenses of the deceased as well as for other reasons as the deceased died bachelor. He has also referred the case of Syed Basheer Ahamed & Ors. vs. Mohd. Jameel & Anr., reported in AIR 2009 SCW 493 and prayed for dismissal of the appeal.

11. Law prescribed under the M.V. Act, regarding payment of compensation is a welfare law. The tribunal/court is to determine a just and fair compensation. In the case of Basheer Ahmed (supra) the Apex Court held in para 9 of the judgment thus:

The expression "which appears to be just" in S.168 vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the

persons affected nor should it be punitive to the persons(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimants(s) has to be fair and reasonable by accepted legal standards.

In the case of Sarla Verma(supra) the apex court held-

Just compensation is adequate compensation which is fare and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions.

In the case of Managing Director TNSTC Ltd. Vs. K.I. Bindu & Others(AIR 2005 SCW 5343) the apex court held that the Second Schedule to the Act may serve as a guide but cannot be used on a ready reckoner.

In my considered opinion, in a case u/s 163A, the Tribunal/court is required to determine the just and fair compensation taking into consideration the loss of dependency on the part of the petitioners, the age and income of the deceased and other relevant imponderables and uncertainties. The Tribunal/court shall not just apply the structured formula as prescribed in Second Schedule and determine amount of compensation mechanically ignoring other attending factors.

12. It is rightly pointed out by learned counsel, Mr. Deb that Section 163(A) has started with a non-obstinate clause and in a petition under that Section the petitioners were not required to prove rash or negligent act on the part of the driver, which is required in a case u/s 166 of the M.V. Act. But, in a case u/s 163(A) of the M.V. Act, the Tribunal has to determine the just and fair compensation taking into consideration the position of the claimants, the income and age of the deceased and other facts of the accident, arising out of which, the deceased died. In the case in hand, the appellant- petitioners, being parents, prayed for awarding compensation for the death of their young son, who died bachelor. The age of the appellant-petitioner No.2, the mother, as stated by her, in her deposition, was 46 years on the date of her evidence recorded before Court i.e. on 12.07.2000. The respondents only put a suggestion that she was aged about 48-50 years and her husband, i.e. the appellant-petitioner No.1 was aged about 60 years. No documentary evidence produced before the Tribunal regarding age of the appellant-petitioners. In the facts and circumstances of the case, the Tribunal was right to apply some guess work, some hypothetical considerations and arrived at a finding of the age of the appellant-petitioner No.2

as 50 years at the time of accident and determined the compensation, applying the multiplier method.

13. Let us first see whether the multiplier applied by the Tribunal taking into consideration the age of the appellants was appropriate or not. Admittedly, in the case in hand, the deceased died bachelor at the age of 25 years, leaving behind his parents, aged around 50 years. The father's profession or income has not been mentioned in the claim petition and also not transpired in the evidence on record. The mother i.e. the petitioner No.2, in her deposition before Tribunal, stated herself as a housewife and thereby an inference may be drawn that petitioner No.2, the mother was dependent on the income of the deceased. In the circumstances, petitioner No.1, i.e. the father, cannot be held to be a dependent on the income of the deceased. There is nothing else that the deceased left any other dependent on his income.

In the case of *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, the Hon'ble Apex Court in a case where an unmarried young boy of 18 years died and the parents, aged 47 and 43 years respectively, presented the claim petition, found it justified to determine compensation applying a multiplier of 10 taking into consideration the age of the parents. In my considered opinion, where the deceased left behind his mother, the only dependent on him, and he was a bachelor, aged 25 years, the determination of compensation must be taking into consideration the age of the mother and not the age of the deceased, though the petition was one u/s 163(A) of the M.V. Act. I cannot appreciate the submission of learned counsel, Mr. Deb that in a petition u/s 163(A) of the M.V. Act, the Tribunal cannot see the other factors and just to apply the structural method of calculating the compensation as per the 2nd Schedule of the M.V. Act. The Hon'ble Apex Court in catena of judgments has already determined the law regarding the multiplier method to be applied in particular cases, and therefore, the Tribunal cannot shut its eyes and just jump to the conclusion of fixing compensation based on the multiplier and multiplicand prescribed in Second Schedule of the Act.

In para 18 of the case of *Syed Basheer Ahamed(supra)*, the Hon'ble Apex Court had held thus:

18. On the question of deduction on account of personal expenses by the deceased, there is no set formula which could be applied in every case to determine as to what should be the deduction on this account. The contention that deduction on that count cannot exceed one-third on the ground that there is some statutory recognition in the Second Schedule to the Act for such deduction, is untenable. The said deduction would depend upon the facts and circumstances of each case. In the present case, no evidence was led on this point as well. In the absence of any evidence to the contrary, the practice is to deduct towards personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50%) if he was a bachelor. Thus, there is no material on record warranting interference with the consistent view of

both the courts below on the point."

14. In the case of Sarla Verma(supra), in para 15, the Hon"ble Apex Court observed thus:

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non- earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

15. In the facts and circumstances of this case, while the deceased was a bachelor and he left behind the petitioner No.2, i.e. the mother as the only dependent, who appeared and deposed before the Tribunal, I think the application of multiplier taking into consideration the age of the petitioner was appropriate. If we take the age of the petitioner No.2 as 45 to 50 years at the time of accident, as per the Second Schedule, the multiplier would be 13. The Tribunal applied the multiplier of 11, which seems to be wrong and I think, in this case, a multiplier of 13 (thirteen) should be applied. If we take the monthly income of the deceased Rs.3,000/-, as already held, the yearly income arrives at Rs.36,000/-. In view of the facts and circumstances, 50% should be deducted from the income of the deceased towards personal and living expenses of the deceased and towards other imponderables and uncertainties about contribution to the mother as the deceased was a bachelor, 50% deduction should be appropriate, and therefore, loss of income on the part of the petitioner No.2 for the death of the deceased may be taken as Rs.18,000/- per annum and that amount is to be multiplied with the factor 13(thirteen) and the amount stands at Rs.2,34,000/-. Further the appellant-petitioner is also entitled to funeral expenses of Rs.2,000/- and loss of estate of Rs.2,500/-, as prescribed under Second Schedule of the Act, totaling an amount of Rs.2,38,500/-. The compensation, accordingly, enhanced to the tune of Rs.2,38,500/-(rupees two lakhs thirty eight thousand and five hundred) and the enhanced amount shall be paid within 45 days from today, failing which the amount shall carry interest

@12% per annum. The payment obviously is to be made by the Insurance Company as already determined by the Tribunal.

16. With these observations, the appeal stands disposed of. A copy of the judgment may be made available to the appellant-petitioners and the Insurance Company.

Send back the L.C. records along with a copy of the judgment.