

(2006) 02 PAT CK 0063
In the Patna High Court

Sukhdeo Paswan

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2006) 3 ACC 769 : (2007) ACJ 1195 : (2006) 2 PLJR 171

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—By this appeal u/s 173(1) of Motor Vehicles Act, 1988, the appellant original claimant challenged the amount of compensation awarded by the First Additional District Judge-cum-Additional Motor Accidents Claims Tribunal, Khagaria in Claim Case No. 27 of 1996, by a judgment recorded on 29.1.2002, whereby, an unfortunate father, appellant-claimant, came to be awarded a grossly inadequate amount of Rs. 52,000 only by way of compensation.

2. Upon a joint request of the parties and considering the urgency of the matter, the appeal has been taken up for final hearing today itself.

3. The following aspects have remained uncontroverted from the record which may be highlighted at the outset:

(1) That the original claimant is an unfortunate father who lost his minor son on account of vehicular accident which occurred on 20.4.1996.

(2) The deceased son Kabir Gandhi was aged about 12 years as per the pleadings who was standing by the side of the road and on account of rash and negligent driving on the part of the driver of jeep No. BR 34-0723 sustained fatal injuries as deceased was crushed.

(3) The original opponent No. 1 was the owner, the original opponent No. 2 was

the driver and original opponent No. 3 was the insurer of the offending jeep involved in the accident which cut short the life of a promising boy in the prime of his youth which led to filing of a claim petition before the Tribunal concerned by the father.

(4) The Tribunal upon consideration of the facts and circumstances reached to the conclusion that the accident was on account of rash and negligent driving on the part of the driver of the jeep.

(5) While quantifying the damages the Claims Tribunal awarded an amount of Rs. 52,000 for the premature demise of a young boy between 12 and 15 years in a vehicular accident which is grossly inadequate and contrary to the provisions of law.

(6) The victims of the road accident are required to be compensated for the tortious act of the tortfeasors so as to see that they are placed, as nearly as possible, in the same financial position, as they would be had there been no road accident. Otherwise, human life is invaluable and a great loss, more so, when an unfortunate father happens to attend the cremation of a young son, is a great mental and social setback in life.

(7) The compensation amount should not be a windfall and nobody should try to make capital out of the calamity. At the same time, there should not be grossly inadequate compensation. The Tribunal has, therefore, to strike the balance to see that in terms of the financial measure the victims if injured or their legal representatives, if fatal case, are given financial compensation, as nearly as possible, so that the economic loss sustained by them on account of premature death could be justly compensated.

4. On the plain perusal and evaluation of the factual profile of the present case the amount that is awarded to the extent of Rs. 52,000 to the unfortunate father who has lost his young son between 12 and 15 years is grossly inadequate. It is diametrically opposite to the several propositions of law propounded so far. It is, therefore, necessary to revise upward the amount of compensation. In this context, since the child was between 12 and 15 years and was a student of class 6th and after school hours he was partly also doing the work of a helper as per evidence of the father, apart from examining the earning in such a situation, Parliament in its wisdom has also made structured formula in the Second Schedule in terms of the provisions of Section 163A of the Act which needs to be considered and it has not been considered and appreciated by the Tribunal while awarding the amount of compensation in the present case on hand.

5. The Second Schedule while reading in terms of the formula of Section 163A is structured for payment of compensation for third party fatal accident or injury cases. The claims as per this Schedule in absence of any evidence about the income of the injured or the deceased can be assessed at Rs. 15,000 per annum. For the purpose of consideration of multiplier the age of the deceased is important. In the present case the deceased was below 15 years. Therefore,

according to the structured formula 15 multiplier is appropriate as prescribed. If the amount of Rs. 15,000 is multiplied by multiplier of 15 it comes to an amount of Rs. 2,25,000 (rupees two lakh twenty-five thousand). Obviously, in terms of the other clauses provided in the Schedule for funeral expenses, loss to estate and medical expenses a consideration of Rs. 25,000 would be reasonable. It is, therefore, the original claimant-appellant before this court who in this appeal is held entitled to the compensation amount of Rs. 2,50,000 (rupees two lakh fifty thousand only) along with interest at the rate of 9 per cent from the date of filing of the claim petition till the payment divided by one-third towards the expenses for the deceased. Therefore, the amount of compensation of Rs. 15,000 x 15 = Rs. 2,25,000 + Rs. 25,000 = Rs. 2,50,000 divided by one-third comes to Rs. 1,50,000 (sic) by way of compensation under both the heads?monetary and non-monetary for the untimely demise of the deceased at the cruel hands of providence with interest at the rate of 9 per cent per annum on Rs. 1,50,000 from the date of application till realisation.

6. The insurance company, therefore, shall pay the aforesaid amount deducting or subtracting the amount already deposited or paid to the claimant within a period of two months from today, failing which, it will be open for the appellant to execute the award in accordance with law.

7. The claim amount is modified to the aforesaid extent while allowing this appeal with costs.