
(1990) 10 OHC CK 0033
In the Orissa High Court

Suni Singh and Others

APPELLANT

Vs

Khitish Chandra Tripathy and Another

RESPONDENT

Date of Decision : 15-10-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1991) 2 ACC 563

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") by the claimants who are parents and widow of the deceased. On 14.9.1987 at about 9.30 a.m. the vehicle ORM 1888 caused accident as a result of which deceased succumbed to the injuries. Claiming deceased to be aged 20 years, claimants asserted that the deceased was earning Rs. 360/- per month and accordingly, they are entitled to compensation of Rs. 1,25,000/-. While not disputing the accident, owner of the vehicle deined negligence blaming the deceased for the accidental account of his mental unsoundness. Insurer accepting the insurance denied all other facts.

2. Tribunal held the deceased to be aged 20 years having monthly income of Rs. 360/- out of which he was contributing Rs. 200/- for dependency. Finding negligence of the driver to be cause of accident, tribunal applied multiple of 10 and determined just compensation at Rs. 24,000/- with a direction that the amount is to be shared equally. He directed that out of the compensation in name of each claimant an amount of Rs. 5,000/ shall be deposited for five years in a nationalised bank for postal saving scheme. Balance was directed to be paid equally after deduction of the fee payable. Tribunal fixed rate of interest at 6% per annum if paid within two months and in case of non-payment at 12% per annum till date of payment. Against this award claimants have preferred this appeal.

3. On perusal of record, I am satisfied that finding of negligence of driver, age

and income of the deceased are unassailable. However, contribution of deceased from out of his income and determination of just compensation and consequential apportionment, deposit and interest payable are to be seriously considered.

4. Tribunal held that the deceased would be requiring to keep him fit for which his contribution would be Rs. 200/- only per month. There is no material in support of the same. When deceased was maintaining his parents and wife, in absence of any other material with regard to other amounts to be added to the income of the deceased, I am inclined to hold that the total amount was being spent equally. As such 1/4th would be deducted and balance would be his contribution. This comes to Rs. 270/-mathematically. Mathematics is a bad master and cannot control decisions in all circumstances. It is however, a great servant which can be best utilised to make a reasonable estimate. Making an overall consideration, in view of paucity of materials, I am inclined to hold that contribution of deceased for dependency of the claimants was Rs. 250/-per month. Thus, annual loss of dependancy comes to Rs. 3,000/-.

5. Future loss is not certain. With uncertainties of future compensation can be awarded by a direction to the owner to make arrangement so that the loss sustained is made available either monthly or annually or even in a lump sum. Loss of company and mental pain on that account is also payable. Thread base accounting comes within the domain of mathematics which should not control fully the determination. Taking into consideration the nature of dependancy , nature of loss of consortium and other social and personal factors with judicial experience just compensation for future loss is to be determined. In some cases, mathematically the amount is calculated and deducting from it a part ordinarily 1/6th for future uncertainties and benefit of lump sum payment, award is given. Keeping in view that compensation should not be a source of profit and penalty to the person liable to pay at times multiple of the annual loss is adopted. In some cases a sum is fixed which would earn the equal amount of loss of dependancy taking into consideration the expenses to be incurred to collect the annual yield. It is true that loss of a son or a husband cannot be compensated. Yet, by judicial experience, a just amount is determined which would, be adequate to compensate the material loss and to some extent the mental and physical pain.

6. In this case claimants are young widow aged 19 years having no bondage of a child which facilitates remarriage and parents who are not sufficiently old but are aged 55 and 50 years. I am inclined to hold that Rs. 40,000/- as compensation taking into consideration all the circumstances available on record would be adequate. I accordingly accept contention of learned Counsel for the appellants and increase the amount of compensation to Rs. 40,000/-.

7. Widow has a great chance of remarriage in view of the age. Out of loss of annual dependancy of Rs. 3,000/-her share of loss would be Rs. 1,000/- to Rs. 10,000/- would be adequate if invested properly to earn Rs. 1,000/-annually. For

loss of company, a sum of Rs. 2,000/- would be adequate keeping in view the total compensation determined in the peculiar circumstances. Thus claimant No. 1 is entitled to compensation of Rs. 12,000/-. In all claimant Nos.2 and 3, the parents are jointly entitled to the balance sum of Rs. 28,000/-. There was delay in preferring the appeal. Insurer ought not to be saddled with interest when it was not responsible for the delay. Payment of interest is within discretion of the court accordingly. I am inclined to hold that interest at the rate of 6% per annum for payment within two months from the date of application till payment within two months shall be adequate provided Insurer has not already discharged its liability as per the award of the Tribunal. In case payment has already been made, insurer shall not be liable to pay interest for the balance amount of Rs. 16,000/-. If payment is made within two months. In case payment is not made within two months, balance amount shall carry interest at 12% per annum from the date of application till payment is made. Fee payable on claim petition shall be realised by apportionment between the claimants and the insurer in the proportion of success and failure. After deduction of the fees payable by the claimants as per this order, out of Rs. 12,000/- payable to claimant No. 1 Rs. 9,000/ shall be invested in fixed deposit in the nearest Post Office, Gramya Bank or Nationalised bank available within Khunta Police Station so that claimant can receive the interest monthly. Out of Rs. 28,000/- payable to parents (claimants No. 2 and 3) Rs. 20,000/- shall be invested likewise in the nearest post office, Gramya Bank or nationalised bank within Khunta Police Station. Tribunal shall call upon the parties to furnish details and shall take assistance of the District Legal Aid and Advice Board for compliance with this direction. Insurer with its branches and agents in the area shall also assist the Tribunal in the matter. After deduction and investments are complete, balance shall be paid to the claimants separately. While working out this order, Tribunal shall keep in mind the compliance of its order in this regard since there was no stay by this court.

8. In the result, appeal allowed in part. Parties shall bear their own costs.