

(2006) 09 CAL CK 0077
In the Calcutta High Court
Case No : F.M.A. No. 3057 of 2002

Swapan Kumar Sarkar and Another	APPELLANT
Vs	
United India Insurance Co. Ltd. and Another	RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166, 168, 171

Citation : (2007) ACJ 1853

Hon'ble Judges : Pratap Kumar Ray, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant;N.K. Rakshit, for the Respondent

Final Decision : Allowed

Judgement

Arunabha Basu, J.—Heard the learned advocates appearing for the parties.

2. This appeal u/s 173 of the Motor Vehicles Act, 1988 is directed against the judgment and order passed by learned Judge, Motor Accidents Claims Tribunal and Third Additional District Judge, Ali-pore in connection with M.A.C. Case No. 205 of 1999. The Tribunal while disposing of an application u/s 166 of the Motor Vehicles Act, 1988 awarded a sum of Rs. 2,50,000 as compensation.

3. The short question that arises in this appeal is, whether the learned Tribunal passed an award of compensation whereby and whereunder a lump sum compensation has been awarded by following the correct proposition of law such as, whether the learned Tribunal applied the multiplier method in order to determine the amount of compensation payable to the appellants?

4. The case on which the application u/s 166 of the Motor Vehicles Act claiming compensation was filed in short is that on 16.9.1999 the accident took place involving a private bus bearing No. WBU 2431 which dashed the motor cycle driven by the deceased, as a consequence of the said accident, the deceased expired and a claim petition was filed by the parents of the deceased. So far as the question as to fault liability of the driver of the offending vehicle, that is, the

bus is concerned, the Tribunal arrived at a correct finding and held that due to negligence on the part of the driver of the bus, the accident took place causing the death of the only child of the claimants.

5. Learned advocate for the appellants submitted that while fixing the quantum of compensation, the Tribunal did not follow the structured formula which has been accepted to be the safer guide while deciding the amount of compensation and failed to consider the income of the deceased and did not apply the correct multiplier in deciding the quantum of compensation. It is the submission of the learned advocate for the appellants that without following any of the settled principles of law as decided by Apex Court in various judgments, the learned Tribunal awarded a lump sum as compensation mainly on the reason that the deceased was in a temporary job and moreover there is no loss of dependency of the father who was earning Rs. 32,000 per month as he was posted as Deputy Director-in-Charge, Central Leather Institute. The Tribunal also decided that the loss of dependency of the mother is negligible. But only upon sympathetic consideration about the death of the only child of the claimants awarded a sum of Rs. 2,50,000 as lump sum payment of compensation.

6. The question now arises is, whether such method in determining the compensation as resorted to by the Tribunal will be just and proper? In terms of Section 168 of the Motor Vehicles Act the Tribunal or court is required to award "just" compensation which in the given circumstances of a particular case will be just and proper. Several factors will be taken into consideration in awarding compensation. But it is well settled by various judgments of the Apex Court that while deciding the amount of compensation, the Tribunal or court shall follow the structured formula as provided in Second Schedule to Section 163-A of the Motor Vehicles Act, 1988. The learned advocate for the appellants referred to the decision of the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . The Apex Court after consideration of various judgments passed by the different High Courts and also after taking into consideration some defects that are present in multiplier system appended to the Second Schedule of Motor Vehicles Act, 1988, held that in spite of such defects and mistakes, Tribunal or court shall adopt the same not as a ready-reckoner but to use the same as a guide. This position decided by the Supreme Court in Trilok Chandra's case (supra) has been followed by other decisions of the Supreme Court and it has now become the settled position of law that while compensation even in cases not falling u/s 163-A of Motor Vehicles Act, the Tribunal or court shall follow the structured formula as a guide to decide the amount of compensation and shall adopt correct multiplier in given circumstances of a particular case.

7. So far as the present case is concerned, it is evident that the learned Tribunal did not follow the multiplier system but adopted a method of his own and awarded lump sum amount as compensation, but failed to discuss under what provision or following what principle such lump sum amount of compensation

was fixed. The reason advanced by learned Tribunal about the income of the father and the status of the deceased being that of temporary service will be of no consequence in deciding the quantum of compensation. While deciding the case where compensation is claimed under the provision of Motor Vehicles Act, it is the duty of the court to award "just" compensation in view of the fact that the provision is the outcome of benevolent legislation and in cases of injury or death, the claimants are awarded compensation for the loss they have suffered in terms of money value even though death could never be compensated by money.

8. Learned advocate for the respondents submits that so far as the present case is concerned as the deceased was a bachelor and the appellants are the parents, the correct multiplier will be according to the age of the parents and not according to the age of the deceased. It is not disputed that the deceased was aged 26 years at the time of his death and correct multiplier will be 18. In this connection, it is also pointed out that we do not find any justification about the finding of Tribunal whereby the temporary status of employment of the deceased was taken into consideration. It is not disputed or challenged that deceased was employed as a probationary officer in Rallis India Limited and he was earning Rs. 7,967 per month which was proved from the income certificate and also from the appointment letter. So, the income of the deceased which is the main criteria to decide the amount to be taken into consideration (sic) the monthly income will be Rs. 7,967. The same is required to be rounded up to Rs. 8,000. For application of the correct multiplier it is the submission of the learned advocate for the respondents that the age of the deceased may not be taken into consideration. In support of his contention the learned advocate for respondents has referred to a decision of Apex Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., . In this case Apex Court considered a claim petition where the claimants were not only the parents but also the daughters of the deceased. The Apex Court after considering various judgments adopted multiplier 10 after examining various factors peculiar in the said case. In this case the income of the deceased was taken into consideration and the Supreme Court after considering the total income of the deceased and also after considering the economic state of affairs of this country adopted a middle path and applied multiplier 10, in a case of compensation, where not only the parents but also the daughters of the deceased were applicants. The adoption of correct multiplier was also taken into consideration by the Supreme Court in Gyanchand Jain v. Parmanand 2003 ACJ 2152 (SC). In this case a person deceased was unmarried and aged 26 years and the claimants were parents respectively aged 55 and 48 years. The Supreme Court after considering the age of the claimants held at para 4:

(4) It is not disputed that maximum multiplier that could be applied is 18. Since the deceased was unmarried and the age of the mother was 49 years and that of the father was 55 years, the total loss of dependency has to be determined keeping in view the age of parents. It is well established that the age of the claimants when they happen to be parents in the case of a deceased unmarried

child is a relevant factor for determining the multiplier to be adopted. Under such circumstances, the multiplier applied by the Tribunal which was upheld by the High Court is appropriate.

In *Gyanchand Jain* (supra) the Supreme Court after considering the respective age of parents fixed multiplier 12 to be the correct multiplier in awarding compensation.

9. The decision as highlighted above clearly establishes that while awarding the compensation the court must apply multiplier with such variation as is applicable in a particular case. So far as the present case is concerned, we are to determine the correct multiplier after considering the age of the claimants, who are the parents. In the application it is decided that father of the deceased was aged 50 years and the mother was aged 40 years at the time of filing the application. Application for compensation was filed on 22.11.1999. In the evidence, Swapan Kumar Sarkar, PW 1, stated that he is aged 52 years while his wife is aged 42 years. There is no dispute about the age of the applicants and we accept the age to be the correct age of the applicants. The correct multiplier if the age of the father is taken into consideration will be 11 while the correct multiplier if the age of the mother is taken into consideration will be 15. In order to consider the applicability of the correct multiplier, we are required to total the multiplier applicable under the respective ages and then to divide the same with two, the multiplier will be in terms of the age of the mother as already pointed out is 15 and in terms of the age of the father will be 11. Total of multiplier will be 26 and dividing the same by 2 and adopting multiplier 13 to be the correct multiplier applicable in this case. In addition to what has been stated above if we also take into consideration the average age of the parents, then the average age will be 47 years and the multiplier applicable will be 13 as per the structured formula as provided in the Second Schedule and, as such, both ways the correct multiplier so far as the present case is concerned will be 13. Total amount of compensation after deducting 1/3rd will be Rs. 64,000 per annum which after multiplying with multiplier 13 comes to Rs. 8,32,000. A further sum of Rs. 2,000 towards funeral expenses under the heading general damage and a sum of Rs. 2,500 as loss to the estate shall be awarded. Total amount of compensation payable u/s 166 of the Motor Vehicles Act will be Rs. 8,36,500.

10. The learned Tribunal while deciding the application u/s 166 of the Motor Vehicles Act, 1988, did not award any interest save and except awarding 9 per cent interest per annum only under default clause. The payment of interest is provided u/s 171 of the Motor Vehicles Act. Section 171 of the said Act stipulates that the interest shall be paid at such rate and from such date not earlier than the date of making the claim. Unless special reasons are prevalent and considered in a particular case, it is obligatory on the part of Claims Tribunal to award interest from the date of filing the application. So far as the present case is concerned, the claim petition was filed on 22.11.1999 and the interest at the rate of 9 per cent shall be payable from the date of filing the application.

11. In view of our discussions, the finding of the Tribunal about the quantum of compensation appears to be perverse and must be quashed. The order of the Tribunal about payment of compensation is modified in the following manner:

The insurance company shall pay compensation of Rs. 8,36,500 u/s 166 of the Motor Vehicles Act along with 9 per cent interest payable from the date of filing the application. The total amount of interest payable shall be suitably adjusted from the payment effected by the insurance company u/s 140 of the Motor Vehicles Act as well as on and from the date of payment of the amount as awarded by Claims Tribunal in the case under appeal. The amount of interest payable will be reduced initially from the date of payment of Rs. 50,000 and thereafter again on and from the payment of Rs. 2,50,000. The insurance company will pay the amount along with the interest within two weeks from this date. Liberty is given to the Tribunal to assess the correctness of the amount so far as the payment is concerned by the insurance company and the Tribunal is given liberty and leave to calculate the interest payable by the insurance company and to order accordingly.

12. With this modification, the appeal is allowed.

13. Registry is directed to send back the lower court record along with copy of this order by special messenger at the cost of the appellants. Such cost be deposited within a week from this date.

14. Let xerox certified copy of this order, if applied for, be given to the learned advocates appearing for the parties expeditiously.

Pratap Kumar Ray, J.

15. I agree.