(2011) 03 CAL CK 0007

In the Calcutta High Court

Case No : F.M.A. No. 1081 of 2007

Swapna Roy and Others — APPELLANT

Vs

New India Assurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2012) ACJ 2264

Hon'ble Judges : Prabhat Kumar Dey, J;Amit Talukdar, J

Bench : Division Bench

Advocate : Indranil Chakraborty, for the Appellant; Parimal Pahari, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—Assailing the judgment and order dated 18.8.2006 passed by learned Motor Accidents Claims Tribunal, Calcutta in M.A.C.C. Case No. 212 of 2005 this appeal has been preferred by the widow and the three sons of the deceased. The Tribunal by its impugned judgment and order under appeal disbelieved the income capacity of the deceased and based his finding on notional income and returned the award of Rs. 90,000. Apart from applying the default clause of interest at the rate of 9 per cent per annum, he was of the view that "...considering the facts and circumstances of the present case, at this stage I am not awarding any interest in favour of claimants..."

2. Mr. Chakraborty, appearing for the appellants, has argued the appeal in great details. He has taken us through the entire records and wondered as to whether the finding of the learned Tribunal based on notional income can be maintained. For this purpose Mr. Chakraborty took us to Part-II of the Paper Book including the Supplementary Application being C.A. No. 1313 of 2010 to show that there was an income of the deceased, which the learned Tribunal did not take into account. He also submitted that succession certificate of the estate of her late husband was also obtained which shows that he had some income.

3. Furthermore, Mr. Chakraborty has submitted from the claim petition as well as from the evidence of PW 1 that all documents pertaining to his income and other papers used to be carried by the deceased, at the time of the accident, the same was misplaced for which purpose a G.D. Entry, Exh. 8, before the concerned police station was lodged. Yet, despite the deceased having an income, which transpires from the documents in the supplementary application as well as from Part-II of the Paper Book, Mr. Chakraborty submitted that the learned Tribunal came to such a finding which was absolutely improper. He referred to the Division Bench decision of this court in Sabita Singha v. National Council of Regional Scheme Centre, (2007) 1 WBLR (Cal) 184 and submitted even though the income of the deceased has been shown as Rs. 14,000 per month (claim petition) as well as from the evidence of the widow (A-1) of the deceased, assessment on notional income was absolutely wrong on the part of the Tribunal.

4. According to Mr. Chakraborty, the Tribunal did not at all assess the loss in a correct fashion whereas it was a specific case of appellant in her cross-examination that she is to maintain the entire family as all her three sons are unemployed and her elder son was disabled.

5. Lastly, Mr. Chakraborty submitted that the income of the deceased should be taken as Rs. 14,000 per month and applying the appropriate multiplier, the assessment was required to be made.

6. According to Mr. Chakraborty, initial claim was for Rs. 9,05,500 but without any proper appreciation of the evidence, the amount was reduced to Rs. 90,000 on the basis of notional income.

7. Furthermore, Mr. Chakraborty submitted that no interest was awarded on the claim and the said issue was not properly handled by the Tribunal.

8. He has also prayed for imposition of interest.

9. Mr. Pahari, appearing for New India Assurance Co. Ltd. (hereinafter referred to as ''insurance company''), was of the view that since no document in support of the income was produced, the Tribunal had no other option but to rely on the notional income.

10. Mr. Pahari could not find any wrong with the order and prayed for dismissal of the appeal. He has also submitted that the entire amount in terms of the award passed by the Tribunal has already been paid.

11. He referred to the Income Tax Clearance Certificate of the deceased and submitted that his earning was very nominal. So far as the question of interest was concerned, Mr. Pahari submitted that already there was an order by the Tribunal that in the event the amount was paid late, there was a default clause made applicable and the Tribunal in its discretion had refused to award any interest on the compensation amount. As such, Mr. Pahari submitted, no interference with the said decision is called for.

12. In reply, Mr. Chakraborty has submitted that in a business there are ups and downs and the income cannot be static. As such, reliance of Mr. Pahari for a particular year (page 18 of the supplementary application) cannot be a deciding factor.

13. After having heard Mr. Chakraborty for the appellant and Mr. Pahari for the insurance company, we would proceed to appreciate as to whether the amount of compensation directed to be paid in favour of the appellants can be sustained or the same is required to be enhanced.

14. Appellant filed claim petition before the Tribunal on 29.8.2005 claiming a sum of Rs. 9,05,500 as compensation. In her claim petition, she has described the age of her husband as 57 years having a business under the name and style ''M/s. A.S. Maintenance & Construction Engineers'' with a monthly income of Rs. 14,000. In her claim petition, it has been stated that the deceased was both income tax and sales tax payee. The bag containing the current documents was with the deceased on the fateful period of time. Loss of the same has been reported before the concerned police station.

15. In her deposition, she has also claimed for compensation of Rs. 9,05,500 and has stated that her husband was 57 years of age having a monthly income of Rs. 14,000. She has proved the General Diary, Exh. 8, lodged by her pertaining to loss of the necessary documents. She has proved the Trade Licence (Exh. 10) issued in the name of her husband and her cross-examination reveals that the deceased used to run his business since before her marriage. It also shows that her elder son is disabled and the other two sons do not earn.

16. For a while we have to refer to the post-mortem report, Exh. 4, prepared by Molly Banerjee, Demonstrator, Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta and concurred by R. Karmakar, Professor & Head of the Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, which shows the age of the deceased as 60 years. The Death Certificate, Exh. 2, issued by the Senior House Staff of Sir Nil Ratan Sircar Medical College & Hospital shows the deceased to be of 65 years.

17. The supplementary application, which formed part of the Paper Book, contains papers relating to the business carried on by the deceased. It also reflects that the deceased was the owner of ''M/s. A.S. Maintenance & Construction Engineers'' and various business transactions in respect of his said business. In our considered opinion, after having heard the submissions of both Mr. Chakraborty and Mr. Pahari and on perusing the evidence and other materials on record, the amount of award passed by learned Tribunal was a result of complete misinterpretation of the relevant legal position and in oblivion of the evidence and other materials on record. Whereas, clearly it has been borne out from the evidence of PW 1, widow of the deceased as also from her claim petition that there was an income of Rs. 14,000 per month, which could not be discredited in her cross-examination and the supporting documents showing that

the deceased was running a business and had several business deals with various departments. It was absolutely improper to have computed the income of the deceased on notional basis. The decision of Division Bench of this court in Sabita Singha v. National Council of Regional Scheme Centre, (2007) 1 WBLR (Cal) 184, was fully applicable in the present case.

18. The said decision of Sabita Singha v. National Council of Regional Scheme Centre, (2007) 1 WBLR (Cal) 184, has been followed by a subsequent Division Bench in Chhaya Bishi v. New India Assurance Co. Ltd., F.M.A. No. 657 of 2010; decided on 18.2.2011.

19. The claimants, in our opinion, have been successful in proving their case for compensation on the basis of an income of Rs. 14,000 per month on the average. As rightly set out in the claim application Rs. 14,000 multiplied by 12 would come to Rs. 1,68,000, If 1/3rd is deducted as the personal expenses of the deceased, i.e., Rs. 56,000, then the same would come to Rs. 1,12,000. Evidence of PW 1 shows the deceased was 57 years old at the time of his death. The claim petition also reflects likewise. The post-mortem report, Exh. 4, in respect of the post-mortem examination on the deceased conducted by Molly Banerjee, Demonstrator, Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta and R. Karmakar, Professor & Head of the Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, shows the deceased was of 60 years, whereas in the Death Certificate, Exh. 2, issued by the House Staff of the said hospital, it was mentioned as 65 years.

20. We will accept the evidence of the wife of the deceased, which finds corroboration from her earlier version before the claim petition and we will be more inclined to go by the report of Molly Banerjee, Demonstrator, Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta and of R. Karmakar, Professor & Head of the Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital. The Death Certificate, Exh. 2, issued by the Senior House Staff shows the age of the deceased as 65 years. We would take it as margin of error and would abide by the majority view of Molly Banerjee, Demonstrator, Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta and of R. Karmakar, Professor & Head of the Department of Forensic & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital including that of PW 1 and her petition. As such, applying the multiplier of 8 accepting the age of the victim between 57 and 60 years, the compensation would work out to Rs. 8,96,000 (Rs. 14,000 x 12 = Rs. 1,68,000 - 1/3rd, i.e., Rs. 56,000 = Rs. 1,12,000 x 8) and after calculating the loss to estate, consortium and funeral expenses, another Rs. 9,500 lump sum would be added, which would bring the sum to one claimed originally as Rs. 9,05,500.

21. This would now bring us to the question of interest.

22. Apart from applying the default clause, the Tribunal did not consider the question of interest properly. It held that it was not awarding any interest considering the facts and circumstances which persuaded him not to award any interest has not been spoken.

23. Section 171 of the Motor Vehicles Act contains the provisions for payment of interest. Interest, after all, is the earning capacity of a person. When the amount is kept withheld from the claimant, it results in his loss of income capacity and it is nothing else but a recompense of the same to have an overall workout.

24. Ideally, the amount of compensation should be liquidated forthwith. But it is not so. Delay punctuated by several reasons accentuates the woes and misery of the claimants pushing them to further despair. Interest recompenses their otherwise unavailable money, which is made available after delay. While it is poor consolation for the recipient of a claim amount to know the reason behind the delay in receiving the payment, fact remains he or she sinks into a loss. At a loss to comprehend with the situation at the post-stage of the tragedy/injury and as to why the money, which has been made payable but not being made available.

25. Element of compensation is germane in an order of interest, which is put at this stage to have an overall workout of a just compensation.

26. Even though it is the discretion of the Tribunal to exercise the power vested u/s 171, the same has to be done in a manner which is just and reasonable. It cannot be either whimsical or capricious. In the instant case, no valid reason for failure of the Tribunal to grant interest has been assigned. We find that the appellant is a helpless poor widow with three children none of whom earns; on the contrary, the eldest son is disabled. These are factors, which cannot be rubbed out from one''s mind. In our view, a prima facie case for awarding interest has been made out.

27. Question of grant of interest is no longer res Integra. The Division Bench in Kohinur Begum and Others Vs. New India Assurance Co. Ltd. and Another, and several other decisions following the same, has made the situation no more res Integra.

28. The Apex Court in (1) Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others,); (2) Arun Kumar Agrawal and Another Vs. National Insurance Company and Others, (3) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, (4) Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, and (5) The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, has also held with regard to the entitlement of the claimant for interest.

29. Accordingly, having regard to the hapless plight of this poor widow, we would direct the award of Rs. 9,05,500 would carry an interest at the rate of 8 per cent per annum to be payable from the date of filing of the claim petition (29.8.2005) before the Tribunal.

30. The insurance company is directed to pay the principal sum along with interest calculated at the rate of 8 per cent per annum from the date of filing of the claim petition till such time the total due is entirely liquidated minus the sum already paid, within four weeks from the date of communication of this order through an A/c payee cheque before the Tribunal, which would thereafter disburse the amount in favour of the appellants without insisting upon them to file the surety.

31. Disbursal as directed by Tribunal would, however, be modified to the ratio of the entitlement of A-1, Swapna Roy and A-2, Anup Roy her disabled son be received by A-1, Swapna Roy while that of A-3, Biswanath Roy and A-4, Tamal Roy in equal proportion be disbursed through A-1, Swapna Roy. Keeping in view that the appeal was moved through the Legal Aid, a certified xerox copy be made available to the appellant.

32. Before we part, we must record our deep appreciation of the efforts put in by Mr. Indranil Chakraborty for arguing the appeal on behalf of the appellants through the Legal Services Committee, High Court. Appeal allowed.

Prabhat Kumar Dey, J.

I agree.

