
(1997) 09 KAR CK 0024
In the Karnataka High Court
Case No : MFA 4305/96 c/w. 4306/96

The National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sarojini

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2000) ACJ 126 : (1998) ILR (Kar) 2583

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; S. Prakash Shetty, for R.1 and A. Lobo, for R. 3, for the Respondent

Judgement

M.F. Saldanha, J.—Two interesting points of law, both of far reaching consequences have been agitated in this pair of appeals which concern the same unfortunate incident. On 30.5.1992 a Premier Padmini Car met with an accident in which the son and the niece of the insured Narayana Shetty died. Two separate claims were preferred before the M.A.C.T., Belgaum and by order dated 6.7.1996 which is a common order in both the petitions a sum of Rs.2,80,000/- less Rs.25,000/- already received was awarded in respect of the death of the son and a sum of Rs.1,02,400/- less Rs.25,000/- already received was awarded in the case of the death of the girl Anitha along with interest and costs. By the present two appeals, the Insurance Co. has seriously contested the awards in respect of certain specified heads only. There is a common challenge in respect of both of them whereby the appellants contend that the amount of Rs.1,00,000/- which has been paid separately under a separate clause of the policy must be taken into account while quantifying the total compensation payable and as far as the second case is concerned, the appellants contend that the claimants who happen to be the two sisters of the mother of the deceased girl are not entitled to any compensation under the head of dependency which is in fact the main head of the award. What is pointed out to the Court is that the claimant-mother died during the pendency of the proceedings before the Tribunal

and her two daughters who happen to be the sisters of the deceased girl were brought on record and they prosecuted the litigation. It is relevant to point out that the appellants challenged the action at that very point of the litigation and the matter came up to this Court because the contention raised was that the cause of action gets extinguished on the death of the claimant and that the two married sisters have no legal locus standi to either continue with the litigation or to style themselves as beneficiaries. This Court negated the contention and upheld the order of the Tribunal whereby the sisters had been brought on record and they were permitted to prosecute the claim petitions. That issue is therefore concluded but it has been agitated in a different forum namely that the appellants have seriously contested the award of any amount to the two sisters on the ground that they can never qualify as dependents on the facts of the present case. Essentially therefore, the only two broad questions that fall for determination in this pair of appeals center around the following two issues:-

- a) Whether the amount of Rs. 1,00,000/- that has been paid under a separate clause of the policy in respect of the same incident is required to be deducted from the compensation that has been awarded in each of the cases.
- b) Whether the challenge of the appellants to the award of a sum of Rs. 1,02,400/- under the head of loss of dependency to the sisters in the second case is justifiable.

2. I need to straight away point out, that Mr. Mahesh Learned Counsel who represents the appellants submitted that he is placing heavy reliance on the observations of the Supreme Court in the decision reported in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, . Mr. Mahesh relies on the observations of the Supreme Court wherein it has been very clearly laid down that where pecuniary advantage in which ever form from whatever source comes to the applicant by reason of the death, that it will have to be taken into consideration. The Court was dealing with the provisions of the Fatal Accidents Act and laid down that a party cannot be permitted to recover twice over for the same loss. Learned Counsel vehemently submitted that in the present case the Tribunal has totally overlooked the fact that the amount of Rs. 1,00,000/- was paid under the same policy and not a different policy, that it related to the same incident and not some other facts and he submitted that it was an amount that would merit consideration. He submitted that it was an amount that would accrue on the death taking place and that therefore, while awarding compensation in respect of the death the Tribunal could not under any circumstances refuse to adjust this amount against whatever claim was made. Learned Counsel submitted that the underlying principle has been summarised by the Supreme Court while laying down the dictum that the compensation is in the form of reimbursement for the loss and that therefore, a party cannot be allowed to virtually profit by recovering two sets of compensation in respect of the same loss. What is further emphasized is that on facts, it will be seen that it is the same Insurance Co., that is paying twice over in respect of the same

incident and he submitted that it is an obvious error which is so glaring that it calls for corrective action from this Court.

3. Learned Counsel who represents the respondents claimants submitted that the basic premise of this argument is erroneous. In the first instance, he demonstrated to me that the scheme of the law under the fatal Accidents Act is essentially dissimilar to the provisions under the M.V. Act even though there are similarities in many other respects. Also, Learned Counsel has in the course of elaborate submissions made under this heading demonstrated to me that it would perhaps be little unsafe to go back to principles of English Law when the only aspect of the law that was needed to be examined is the broad principles of the law under the Law of Contracts. I do concede after hearing the Learned Counsel, that there is considerable substance in this line of argument because the decisions in question relate to a different point of time and proceed on the basis of an entirely different set of principles from the ones with which we are now concerned with. If one were to brush aside the intricacies of the various legal aspects that had been canvassed by the Learned Counsel, clear the cob-webs and come straight and simply down to the basic issue, Mr. Shankar is justified when he demonstrates to me that had the additional premium under the separate clause IMT 5 not been paid then there would have been no question of any such controversy. Starting from this premise, what he demonstrates to me is that the quantification that has been done would then have been vulnerable. Learned Counsel thereafter proceeds to point out that the additional premium that has been paid under IMT 5 is an optional amount and that for all intents and purposes it creates a separate contract or a subcontract between the parties which is dehorn the main contract. This is the main plank of the argument canvassed by him and what he submits is that if one were to view the case from this angle, that there can be no question of adjustment or deduction. The principle canvassed by Mr. Mahesh basically prohibits duplication of compensation in respect of the same contract of insurance and there can be no two opinion about the fact that the principle is well founded. The issue in the present case does not involve the question of duplication of compensation but it involves two sets of compensation which are payable virtually under two different heads even if they are under the same policy. The reason why I have referred to the payment of a separate premium and the fact that this is optional is because in insurance parlance, this would come under the concept of "additional cover." The essence of the term additional cover pre-supposes the fact that this would be a cover that one would be entitled to irrespective of what the quantum of the basic cover is and if this is the clear intention of the parties and if this is the clear scheme of the contract then it would be wrong to contend that the payment of the amount of Rs. 1,00,000/- under IMT 5 would constitute either a second payment or a duplication of the compensation. To my mind, when the payment of Rs. 1,00,000/- was made under IMT 5 it was treated as a separate issue altogether because there was no question of determination of quantum as the terms specifically provide that it would be straight away payable on the death

occurring and the Insurance Co., honoured this part of the contract. That being so, it would be wrong to contend that it must once again be taken into the head of computation when the Tribunal decided to compute the heads of compensation. I would go to the extent of holding that since it was under a separate class and since it was under the head of additional cover that it was an amount that was payable to the insured or the person claiming as an amount which was required to be added on to whatever other compensation was received. What the Supreme Court was dealing with in the case referred to supra was essentially a situation whereby a Court erroneously duplicates the same compensation possibly even under different heads and thereby falls into the error of allowing a claimant to end up with two sets of compensations in respect of one head of loss. I do concede that a death has taken place in this case and that it is under the same insurance policy but the law does envisage a situation whereby there could be more than one claim under the same policy, the classic instance being the present one where the additional premium was paid for additional cover.

The real test of the matter would arise if one were to view the case from a reverse angle. If for any reason no claim were to be preferred before the Tribunal on if it were to fail for want of evidence or otherwise, the amount of Rs. 1,00,000/- would still have been receivable by the claimants. This puts the matter beyond any shade of doubt in so far as it will have to be held that this amount is a separate and independent amount and that it cannot be confused with, deducted from or taken into consideration while the other heads of compensation are being computed by the Tribunal. What needs to be taken into account is the fact that the Tribunal computes what one will term as the conventional heads of compensation and the present amount of Rs. 1,00,000/- is virtually the amount that is foreign to those heads. Under these circumstances, I have no hesitation in holding that the first head of challenge to the awards namely that the amount of ,Rs. 1,00,000/- is required to be deducted from the compensation that has been awarded cannot be upheld.

4. The alternate submission advanced by Mr. Mahesh, Learned Counsel representing the Insurance Co., proceeds on a slightly different angle in so far as he submitted that if for any reason the Court were to hold that the amount of Rs. 1,00,000/- paid under IMT 5 is not deductible, whether the Tribunal was obliged to take into account the fact that the claimants have already received this amount while computing the other compensation payable to them. This argument is slightly different from the earlier one in so far as what the learned Counsel submits is that the whole purpose of the exercise is in order to reimburse or compensate the claimants in terms of money for the loss that has occurred to them by the death in question. He submits that this concept should be taken as an aggregate entity and that if it is pointed out to the Tribunal that in respect of the same unfortunate incident for purposes of computing the loss, the Insurance Co. has already paid a sum of Rs. 1,00,000/-, that amount should also be taken into consideration for purposes of computing the gravity of the loss

which is required to be off-set. Mr. Shankar has vehemently objected to any such procedure being adopted in so far as his submission is that when a death occurs, a party may be entitled to some other compensations possibly from an employer or a life insurance or any other sources and that it is not the scheme of the law that the Tribunal is required to even take cognizance of these receipts while quantifying the compensation. What he contends is that when a party pays additional premium and contract for additional cover that the party is aware of the possibility or the risk of death or an injury and the insured has taken note of the possible inadequacy of normal compensation that could be receivable and it is for this reason that the insured consciously takes a decision to pay an additional premium amount because the insured legitimately accepts that in the event of the loss, the compensation which should be paid must be of that order. He therefore submits that in effect, the question of taking into consideration that payment while computing would have the effect of deducting it in so many words, and if that procedure is not permissible that the Tribunal cannot adopt such a course of action.

5. I do concede that the submission canvassed by Mr. Mahesh does appear very tenable at first blush but one cannot lose sight of the consequences of upholding this principle. I do agree with Mr. Shankar when he points out that irrespective of the process of reasoning, the end result would be the same in so far as if the Tribunal were to even take into consideration the payment of Rs. 1,00,000/-, it would necessarily have to scale down the aggregate compensation on the ground that a part or percentage of the loss has already been off-set and that would have the same result as making the physical deduction from the aggregate. Once it is held that the amount payable under the head of additional cover is independent and distinguished and separate from the compensation payable under the main body of the policy. It would not be possible to uphold the argument that the receipt or the amount under the head of additional cover must be even taken into consideration for purpose of computation. In practical terms it would create a serious difficulty in so far as it would not at all be possible to tay down as to under which of the various heads this amount should be adjusted. I am firmly of the view therefore that such a procedure is not permissible and I am guided by the basic maxim of jurisprudence in coming to this conclusion that what cannot be done directly can never be achieved through an indirect course of action.

6. As far as the second head of controversy is concerned, Mr. Mahesh, Learned Counsel appearing on behalf of the appellants has submitted that he is only confining his challenge to the award of the sum of Rs. 1,02,400/- under the head of loss of dependency. The Learned Counsel pointed out to me that the principle embodied in the award of compensation under the head of loss of dependency proceeds on two factors the first of them being the nexus or the interconnection between the parties whereby the claimants have to establish that there was a financial inter-dependency between the deceased and the claimants. While he does concede that in given instances the dependency does not necessarily have

to confine itself to the parents or children or the spouse. What he submits is that if it can be shown in a given case that the claimants related or otherwise were not financially dependent at all to the deceased or could not have been even thereafter, that it would be wrong to award *any amount under this head. The second limb of the argument proceeds on the footing that it must be established that there is a connection between the parties of such nature, that the persons claiming under the head of dependency have to establish that they relied upon the deceased for the financial assistance that they are entitled to claim and that the Court can be reasonably satisfied on facts that this amount would have gone to them in the normal course. He has demonstrated to me from the record of the case pertaining to Anitha that she was an unmarried girl aged 21 years and that the original claim was preferred by her mother on the ground that she is entitled to claim dependency. Mr. Mahesh submits that had the mother been alive that it would have been incumbent upon her to satisfy the court on facts of the dependency short term or long term and then, the Court would have adopted the correct formula for purposes of computing the amount. He has seriously assailed the claim that has been presented by the two sisters of the deceased girl who admittedly are married sisters and he has demonstrated to me from the record that there does not appear to have been an "iota" of evidence that has come up before the Tribunal in support of the plea that these two married sisters residing at Kolhapur and Khanapur had any connection with the deceased except that they were her sisters nor has it been brought on record that they were in any way dependent on Anitha and would have been dependent on her at any time in the future. He therefore submits that this is one of the unusual cases in which the Court would have to virtually substitute the position of the mother who has died in 1993 by that of the two sisters and then consider as to whether at all the claim for dependency is tenable.

7. Mr. Shankar has refuted these arguments through a rather ingenious line of reasoning because he contends that the challenge is not tenable. He relies heavily on the earlier order passed by the High Court when the locus standi of the sisters to continue with the litigation was challenged and according to him once the High Court permitted the sisters to prosecute the litigation on behalf of the deceased mother that it is not open to the Insurance Co., to reopen the matter. What the Learned Counsel has contended is that the two sisters were not the original claimants nor are they claiming anything in their own right but his submission is that they are only prosecuting the claim of the mother and he contends that the Court would therefore have to examine the case from an entirely different angle namely the question as to whether had the mother been alive, would she have been entitled to compensation as a dependent and if so, how much. He reckons the position of the sisters is that of a person who conducts a litigation in the capacity of a power of attorney holder of the original litigant and he submits that this is the mother's claim that the Court is concerned with and not the question as to who is prosecuting it on this ground. He contends that it is not a case which calls for any interference with the order in

question.

8. I do concede that the High Court had permitted the sisters to continue with the litigation and undoubtedly that was a fair and a just order because the litigation could not have been extinguished merely because of the passing away of the mother. That however does not exonerate the sisters from independently establishing that under the head of dependency, they were either financially dependent or that they were entitled to receive financial support from the deceased. This is an aspect of the matter that cannot be confused with the basic issue because the sisters undoubtedly were conducting the case on behalf of their late mother that would hold good as far as the general compensation claimed is concerned. Mr. Mahesh is justified on facts when he points out that it was essential to bring on record some basic evidence for purposes of establishing that the sisters are entitled to claim compensation in the capacity as dependents. On the record of the present case I find that there is virtually no evidence that has been brought on record, on the contrary it has been established that these two girls were residing at Kolhapur and Khanapur, that they are married and there is virtually no material before the Court on the basis of which it can be held that they were even remotely dependent on the deceased Anitha or that they would be entitled to receive any amount from her as dependents. On facts, this is the state of record and it would therefore be impossible to justify the award of the amount of compensation under the head of dependency. This would not affect the other two heads but I need to also draw a distinction in so far as it would not extinguish the award under this head completely. I need to take cognizance of the fact that in the normal scheme of events, had the mother been alive and continued with the litigation, she would have qualified for compensation, under this head which is essentially intended to provide support for the period subsequent to the accident. Viewed at from this angle therefore, the Court needs to take cognizance of the fact that the mother did prefer the claim petition and that she was alive until the year 1993. Under these circumstances even though the date is not available, I would like to consider that the annualized amount of Rs. 6,400/- which has been computed by the Tribunal would be available under the limited head of dependency as compensation for a period of one year which the Court must assume would accrue to the deceased mother as long as she was alive. The compensation awarded under this head i.e. Rs. 1,02,400/- would therefore have to be reduced to Rs. 6400/-. In passing, I need to deal with the submission canvassed by Mr. Mahesh when he pointed out that Anitha was an unmarried daughter and that under these circumstances, the convention has been to treat 50% of the income as personal expenditure and take into account only the balance 50%. On the facts of the present case to my mind, that convention would not be applicable and the Tribunal has adopted the right formula because those exigencies are taken into account from the long term point of view. Also, the question of whether to make a 1/3rd or 50% deduction is a convention that has emerged over a period of time in different cases but it is left to the discretion of the courts to apply a reasonable formula

depending on the facts and circumstances of the case. In the present instance, the income of the deceased accordingly was computed at Rs. 700/- to Rs. 800/- and in this background to my mind the difference is so marginal that it does not call for any interference - I do not dispute the basic principle canvassed by Mr. Mahesh that in the majority of cases the 50% formula would perhaps be the more reasonable rule.

9. As regards the case of the deceased son in MFA. 4306/96, need to record that on behalf of the appellants Mr. Mahesh submitted that though the claimants would be entitled to whatever compensation they should legitimately receive under the law though if there is an error in the computation that the High Court must correct it. He pointed out to me that it is now well settled principle that particularly in cases where the deceased son or daughter is living separately that the Court has to take into consideration that the expenses would be much higher and consequently, 50% is always computed against personal expenses and at the highest for purpose of dependency claims the balance 50% is taken into account. He submitted that in the present case where the evidence clearly indicates that he was living in Bangalore and remitting approximately Rs. 2000/- per month to the parents, that the Tribunal ought not to have gone by the 1/3rd deduction and accepted the figure of Rs. 2400/-, Mr. Shankar has countered this argument by pointing out that this is not an inflexible rule and he has made a pointed reference to several cases in which a contrary view namely that the deduction of approximately 1/3rd alone has been upheld. Secondly, he submits that this is a discretionary order of the Tribunal and as long as it is not demonstrated that it is wrong or per se arbitrary that it does not call for interference. He has also submitted that in the overall context of the fact that with the passage of time, the increases in the emoluments ought to be considered, that the Courts must take this factor into account while doing the computation. I need to point out here that though Mr. Mahesh may be right in pointing out that generally in such situations the Courts have been following a rather rigid rule with regard to the aspect of deductions that there will have to be some rethinking in respect of this field. Some rethinking will have to be done particularly in the light of changed economic circumstances. In the first instance, the principle of legitimate expectation justifiably accepts the principles that the income would go up rather than fall even assuming that expenditure levels may rise, the incomes invariably off-set this but in examining the delicate concept of dependency, one needs to take into account the basic principle that this is a contribution made out of natural love and affection. Viewed at from this angle, what the Courts need to take into account is that as the dependents grow older with the passage of time, their needs would only increase and consequently the possibility of their receiving higher amounts is a very real one. Again, the value of the rupee steadily going down is an aspect that needs to be taken into account because when one considers compensation under the head of dependency scheme, it should be more realistic than theoretical. The argument that a capital amount is received would in fact be a misnomer because this amount when invested would

yields a rate of interest that may at the highest vary to around 10% to 12% per annum and if the amount happens to be even reasonably substantial, one has to take note of the tax deductions. These are angles in relation to this provision of law that have unfortunately not been applied either to and have not been considered and, to my mind even, if this is the starting point that they will have to be applied hereinafter. I do not therefore propose to accept the view that one should do rigid and mathematical calculations under this head and prone the compensation even marginally unless it would be justified. Even if Mr. Mahesh's argument is accepted this is a branch of law in which the Court would have to lean virtually on the concept of liberality. In not accepting Mr. Mahesh's submission therefore, this Court is not rejecting it, but all that is pointed out is that on the facts of the present case it is not being applied.

10. The two leaned Counsel have referred to several decisions which I do not propose to recount in detail but I however need to clarify that the principles that have emerged on the basis of the case law that have been cited by me have been carefully considered and it is on the basis of the principles that have been culled out from those decisions that the law has been applied in these two appeals.

11. I need to clarify that in MFA. 4305/1996 while making the necessary adjustment the amount of Rs. 25,000/- that has been received u/s 140 shall not be refundable.

12. In the result, as far as MFA. 4306/1996 is concerned, the award stands confirmed. The M.F.A. accordingly fails and as far as M.F.A. 4305/1996 is concerned the award stands modified in so far as under the head of dependency claim, the amount of Rs. 1,02,400/- that has been awarded shall stand reduced to Rs. 6400/-. It is clarified that the amount of Rs. 25,000/- received u/s 140 shall not be refundable. The consequent recomputation shall therefore have to be made and if there is any amount paid in excess to the claimants, that will have to be refunded to the appellants.

13. The MFA 4305/1996 partially succeeds.

14. The two MFAs. are accordingly disposed of. No order as to costs.

15. It is clarified that since some degree of recomputation will have to be done, that the Motor Accident Claims Tribunal will take cognizance of the fact that certain investments have been ordered and the M.A.C.T. will pass consequential orders with regard to the refunds if any that are required to be made, or in the alternative the disbursal of the invested amount.