

(2003) 08 OHC CK 0047
In the Orissa High Court
Case No : Misc Appeal No. 580 of 2001

The New India Assurance Co. Ltd.

APPELLANT

Vs

A. Singara Vadivela and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2004) 1 ACC 614 : (2003) 2 OLR 432

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Akshaya Kumar Rath, for the Appellant; P.N. Mishra, for Respondent Nos. 1 and 2, M. Kanungo and N.C. Mishra, for the Respondent

Judgement

B.P. Das, J.

Misc. Case No. 827 of 2002

1. 4.8.2003 -- This is an application for consideration of delay.

2. There is delay of 33 days in filing the appeal as indicated by the Stamp Reporter. Though the grounds taken are not sufficient to condone the delay, considering the submission of the learned counsel for the appellant-petitioner that the interest of the insurer shall be prejudiced if the delay is not condoned and the matter is not heard on merit. I condone the delay in filing the appeal subject to payment of cost of Rs. 350/- to the claimants within a week.

3. The Misc. Case is disposed of.

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4.8.2003 - Heard.

4. On the request of the learned counsel for the appellant. as well as respondents, the matter is taken up for admission and for final disposal.

5. Mr. P. N. Mishra, has entered appearance for respondents 1 and 2, Mr. M.

Kanungo and associates for respondent No. 4. So far as respondent No. 3 is concerned notice in admission and stay matter has been served on him personally. The same be treated as sufficient. Mr. N.C. Mishra and associates have entered appearance for respondent No. 5.

6. Heard learned counsel for the parties.

7. This appeal is directed against an award passed by the District Judge -cum- First Motor Accident Claims Tribunal, Sambalpur in Misc. (A) Case No. 239 of 1999. The judgment and award reveals that four claim cases were heard analogously mainly Misc. (A) Case Nos. 194 of 1999, 207 of 1999, 230 of 1999 and No. 239 of 1999 and they were disposed of by a common judgment.

8. The facts leading to this appeal as reveal from the judgment passed by the Tribunal are that on 6.7.1999 at night the deceased had come to Sambalpur from Brajarajnagar in a trekker bearing registration No. OR- 15- C- 3818 to attend a marriage ceremony and on its return journey on the trekker at about 3 A.M., a truck bearing registration No. OR- 15-C-1495 came from opposite direction in a high speed driven in rash and negligent manner and collided with the trekker, resulting in instantaneous death of the deceased and some of the co-passengers. The deceased was the son of present respondents 1 and 2.

9. In the present case, the claimants laid a claim for compensation of Rs. 6,00,000/- for the death of their son basing upon the income of the deceased to be Rs. 5, 109. 35 per month at the time of accident.

10. The Tribunal framed four issues and found that the death of the deceased was out of rash and negligent driving of the truck resulting the death of four occupants in the trekker. The truck was validly insured on the date of occurrence by the present appellant and the Tribunal further held that the trekker was not a joint tort-feasor for which the National Insurance Co. Ltd. is not required to share the compensation.

11. Coming to the evidence both oral and documentary. I find that the Tribunal awarded a sum of Rs. 7,03,296/- with interest " 10% to the parents of the deceased and according to the Tribunal it was the just compensation for the death of the deceased. The insurer took a ground that the owner of the trekker was also liable to share the compensation as due to negligence of the trekker, the accident occurred.

12. Looking into the above aspect of the case, I find that the Tribunal has made threadbare discussion of the same and considering the evidence on record it came to the conclusion that the trekker is not joint tort-feasor. That apart, there is nothing to indicate that the insurer was permitted u/s 170 of the M.V. Act to take defence that was available to the owner of the vehicle and in the absence of the same it would not open to the Insurance Company to challenge the award on merit, that is to say, that the question of negligence and quantum. (See National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others,). But learned

counsel for the appellant submits that this Court can interfere with the quantum of award if it is too high but too low. According to him, in this case the deceased was an unmarried person and died at the age of 29 years and the Tribunal has applied the highest multiplier i.e. 18, which is wrong, because in case of death of a bachelor, multiplier should be applied taking into consideration the age of the parents of the deceased. In this regard, Mr. Rath, learned counsel for the appellant drew my attention to the decision of the Apex Court reported in 2002 (3) TAC 6 : H.S. Ahammed Hussain and Anr. v. Irfan Ahammed and Anr., wherein the Apex Court observed as follows :

"It is well settled that life expectancy of the deceased or the beneficiaries whichever is shorter is an important factor. Reference in this connection may be made to the decision of this Court in the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, . In the case of National Insurance Co. Ltd. v. M/s. Swarnalata Das and Ors.1993 (2) SCC 743 : 1993 (2) TAC 291, it was observed that "the appropriate method of assessment of compensation ,is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower."

13. Mr. Mishra, learned counsel for the claimants also relied on a decision of the Supreme Court reported in 2003 (1) TAC 490 : Gyan Chand Jain and Anr. v. Premananda and Ors..

14. Relying on the aforesaid decisions. Mr. Mishra submitted that funeral expenditure as well as loss towards love and affection are to be compensated. He further submits that the age of parents being 61 and 55 years, suitable multiplier is to be applied, which should not be less than 12.

15. On perusal of the impugned judgment that the deceased was 29 years of age at the time of his death, the Tribunal applied multiplier of 18. In my opinion, learned Tribunal has gone wrong in applying the multiplier as indicated above. Considering the fact that the deceased was unmarried it should have been calculated taking note of the age of the deceased or parents, whichever is lower. There is no dispute regarding the income of the deceased. So the dependency of the deceased decided at Rs. 39,072/- considering the age of the deceased and the age of the parents and looking into the judgment of the Supreme Court in the case of H.S. Ahammed Hussain (supra) as well as the judgment of Supreme Court in the case of Gyanchand Jain (supra), I direct that the multiplier should be 11. Accordingly, the amount of compensation comes to Rs. 4,29,729/-. At this stage, learned counsel for the respondent submits that the rate of interest is at lower side. Considering the aforesaid aspect, I direct that the interest at the rate of 9% per annum from the date of filing of the appeal till its realisation shall be paid. The claimants are also entitled to get Rs. 4,500/- towards funeral expenses and another Rs. 10,000/- for the loss of love and affection. The entire awarded amount along with interest shall be deposited before the Tribunal within a period of six weeks along with cost. Out of the awarded amount 10% shall be released

in cash equally in favour of the claimants by way of account payee cheque and the balance amount of 90% be kept equally in a fixed deposit for a period of five years for non-encumberable in the name of the claimant-respondent Nos.1 and 2. The claimants shall be allowed to withdraw the interest component in each quarter.