
(2003) 01 OHC CK 0041
In the Orissa High Court
Case No : M.A. No. 161 of 2001

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Sujata Sendha and Others

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2003) 95 CLT 390

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

Bench : Single Bench

Advocate : S.K. Swain, for the Appellant; P.C. Patnaik, for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Das, J.—Heard Shri S. K. Swain, learned counsel for the appellant, and Shri P. C. Patnaik, learned counsel for respondent Nos. 2 and 3.

2. This appeal at the instance of the insurer-New India Assurance Co. Ltd. is directed against the award dated 23.11.2000 passed in M.A.C.T. Misc. Case No. 3/99 by which the 4th Motor Accidents Claims Tribunal, Khurda, has awarded a sum of Rs. 2,97,500/-along with interest " 12% per annum for the death of one Ashok Moharana, who died in a motor vehicular accident.

3. It is alleged that on 31.12.1998 at about 5.30 p.m. while the deceased Ashok Moharana in order to go to Jankia market was standing on the left side morrum flank of N. H. No. 5 near Malaguni bridge, and a passenger bus bearing registration No. OR-02-G-6557 came from Tangi side towards Jankia being driven at a very high speed and in a rash and negligent manner and due to loss of control over the vehicle, the vehicle proceeded to the left extreme side of the road and dashed against the deceased as a result of which the deceased sustained multiple grievous injuries. The deceased was taken to the Khurda Dist. Headquarters Hospital and then to Capital Hospital, Bhubaneswar and when his condition became serious, he was removed to the S.C.B Medical College Hospital,

Cuttack, where he ultimately succumbed to the injuries on 2.1.1999. The parents of the deceased filed the application u/s 166 of the M. V. Act, 1988 claiming a compensation of Rs. 3 lakhs.

4. The Tribunal on an analysis of the oral and documentary evidence came to hold that the death of the deceased was due to the accident caused by the offending bus; the accident in question occurred due to the rash and negligent driving of the driver of the offending bus and the said vehicle was covered by a valid insurance policy condition. The Tribunal ultimately awarded a compensation of Rs. 2,97,500/- and directed the insurer to pay the same with interest " 12% per annum.

5. The Tribunal while assessing the compensation came to find that the deceased was getting Rs. 80-90/- per day as his wages as a carpenter and was contributing Rs. 60-70/- per day to the family. Taking the wage of the deceased at Rs. 80/- per day calculated his monthly income at Rs. 2,400/- and after deducting Rs. 800/- towards personal expenses, deceased's contribution to the family was assessed at Rs. 1,600/- per month and Rs. 19,200/-per year. Taking the age group of the deceased to be 15 years, the Tribunal applied 15 multiplier as the suitable multiplier and assessed the total dependency of the claimants at Rs. 2,88,000/-. Besides the above amount, the Tribunal has allowed Rs. 9,500/- towards funeral expenses thus awarding a total amount of Rs. 2,97,500/-.

6. Learned counsel for the appellant insurer submits that there was nothing before the Tribunal to hold that the deceased was working as carpenter and was getting Rs. 80/- per day as his wage. That apart, it is argued that the multiplier adopted by the Tribunal, i.e., "15 multiplier", is erroneous and is not applicable to the present case.

7. It is well settled that insurer cannot go beyond the defence available to it u/s 170 of the Act for which it cannot challenge the quantum of compensation as well as the negligence. But at the same time, this Court can interfere with the quantum only when the same is found to be either too high or too low. In the particular case, I find that the Tribunal has adopted the 2nd schedule of compensation for third party fatal accident claim. In this connection my attention is drawn to the decision in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, wherein the Apex Court pointed out the errors in the 2nd. Schedule in para 17 thus :

"17. We must at once point out that the calculation of compensation and the amount worked out in the schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years, and the multiplicand is shown to be Rs. 3000/-, The total should be $3000 \times 15 = 45,000$ but the same is worked out at Rs. 60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000/-; the total should have been Rs. 1,44,000 but is shown to be Rs. 1,71,000/-. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the courts can go by the

ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant on the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies" case 1942 AC 601."

In the case of United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., the Apex Court observed as follows :

"21. We, therefore, hold that ordinarily while awarding compensation, the provisions contained in the second schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable."

8. So, in the case at hand, without disturbing the multiplier adopted by the Tribunal, let me have a look at the evidence to find the basis on which the Tribunal has arrived at the income of the deceased. It is a fact that there is no documentary evidence in support of the claim of the claimants that the deceased was getting Rs. 80/- per day towards his wage as a carpenter. That apart, looking at the age of the deceased at which was only 15 at the time of death, it is not believable that the deceased was earning Rs. 80/- per day during the year 1998. Further, the income of the deceased, as fixed by the Tribunal, sounds unreasonable and is at a higher side. As it is permissible to engage some guess work while calculating the income of the deceased in absence of any documentary evidence, in my considered opinion, it would be reasonable to fix the income of the deceased at Rs. 1200/-, i.e., Rs. 40/- per day. The deceased having died at a tender age, his monthly contribution to his family would be Rs. 1,000/- and the annual contribution comes to Rs. 12,000/-. Applying the same multiplier as adopted by the Tribunal, the total dependency comes to Rs. 1,80,000/-. So far as the funeral expenses is concerned, I reduce the same from Rs. 9,500/- to Rs. 4,500/-. Thus, the total amount of compensation comes to Rs. 1,84,500/-, which is rounded off to Rs. 1,85,000/-(One lakh eighty-five thousand).

9. The appeal is accordingly allowed in part and the impugned award is modified to the extent indicated above. The aforesaid amount shall carry interest at the rate of 9% per annum, instead of 12% per annum, as directed by the Tribunal, from the date of the application till realisation. Out of the amount of statutory deposit and the amount of Rs. 1,00,000/- deposited through" a cheque by the

insurer in terms of the order of this Court, 90% shall be deposited in fixed deposit for a period of five years in the names of both the claimants in equal proportion, and balance 10% shall be released in favour of the claimants also in equal proportion by account payee cheques. The balance amount along with the interest as directed above shall be paid by the insurer within a month hence.