
(2013) 02 GAU CK 0056
In the Gauhati High Court
Case No : MAC Appeal No. 105 of 2008

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sri Rammani Rupini and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Penal Code, 1860 (IPC) — Section 279, 304(A), 338

Citation : (2013) 2 GLD 692

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : P.K. Dhar, for the Appellant; D.C. Roy, N. Choudhury and Mr. P. Gautam, for the Respondent

Final Decision : Partly Allowed

Judgement

S.C. Das, J.—By this appeal, filed u/s 173 of M.V. Act, the appellant, New India Assurance Company Ltd., which was arrayed as respondent No. 3 in the claim case, challenged the judgment and award dated 31.07.2008, passed by the learned Member, Motor Accident Claims Tribunal, Court No. 4, Agartala, West , Tripura, in case No. TS(MAC) 580 of 2005. Heard learned counsel, Mr. P.K. Dhar for the appellant and learned counsel Mr. D.C. Roy and Mr. N. Chowdhury for respondent Nos. 1 and 2 and learned counsel, Mr. P. Gautam for respondent No. 5. Respondent Nos. 3 and 4, the owners of the alleged offending vehicles have chosen to remain absent.

2. Fact of the case, in short, is that Narayan Rupini, aged about 24 years, by profession a daily labour was travelling with Jeep vehicle No. TR01-A-2016 on 20.11.2000 from Thangnai bazaar (Howaibari) to Baramura and at about 6-45 a.m., at a place named Coffee bagan on Assam Agartala road, another Truck vehicle bearing No. TRL-3128 came from opposite direction and both the vehicles were driven most rashly and negligently and as a result, there was a collision between the vehicles because of rash and negligent driving and consequently

Narayan Rupini suffered severe injury on his head and other parts of the body. He was taken to Teliamura Hospital from where he was shifted to G.B. Hospital and he died on 22.11.2000 at G.B. Hospital. Respondent Nos. 1 and 2 herein, being the parents of deceased Narayan Rupini, presented an application u/s 166 of M.V. Act, before the Motor Accident Claims Tribunal, Agartala for granting them compensation for the death of their bachelor son.

3. Respondent Nos. 3 and 5 herein, were the owner and insurer of truck vehicle and the respondent No. 4 and the appellant herein were the owner and insurer of the alleged jeep vehicle. All of them submitted written statement before the tribunal and considering their pleadings, the tribunal formulated following issues:--

i. Whether the deceased Narayan Rupini died on 22.11.2000 caused by the Motor accident on 20.11.2000 over the Assam-Agartala Road and if so, whether the said incident had occurred for the rash and negligent driving of the vehicle bearing No. TRL-3128 (Truck) and TR01-1-2016 (Jeep) by their driver?

ii. Who will pay the compensation?

iii. Whether the petitioners are entitled to any relief and if so upto what extent?

4. In course of enquiry/trial, the claimant petitioner No. 1 examined himself as PW 1 and also examined another witness namely Sri Amar Singh Rupini who was a co passenger of the deceased in the Jeep vehicle at the time of accident. Claimant also proved copy of FIR of Teliamura P.S. Case No. 111/2000 under Sections 279/338 and 304(A) of IPC and also proved p.m. report in the name of the deceased and the charge sheet filed by the police after investigation.

Respondents adduce no evidence.

5. The tribunal decided the issues in favour of the petitioners and awarded them compensation of Rs. 4,12,000/- in all, with interest @ 9% per annum.

6. It is submitted by learned counsel, Mr. Dhar that the deceased was a bachelor, aged about 24 years and the claimants are his parents aged about 55 years so far revealed from the deposition of PW 1, at the time of accident. So, while determining multiplier, the tribunal would take into consideration the age of the parents and arrive at a decision that a multiplier of 9 shall apply. Whereas, the tribunal wrongly taking into consideration the age of the deceased, applied a multiplier of 17 for determining the compensation and thereby committed serious mistake.

He has also argued that the tribunal wrongly arrived at a finding that the deceased had a monthly income of Rs. 3000/- though there is evidence that he would earn Rs. 80/- per day and while determining compensation, the tribunal deducted 1/3rd from the total income of the deceased. But according to law, the tribunal would deduct 50% of the income of the deceased, while determining compensation. The tribunal thereby committed a great error and hence the

judgment and award is liable to be interfered.

It is further submitted by learned counsel, Mr. Dhar that the deceased, since died bachelor, mother only is entitled to present a claim petition and is entitled to get compensation. Father since not entitled to get compensation, the tribunal would dismiss the petition.

7. Learned counsel, Mr. D.C. Roy refuting the argument of learned counsel, Mr. Dhar, has submitted that the petitioners are the old and ailing parents of the deceased and were dependent on the income of the deceased. There is no rule that in such cases the age of the parents should be taken into consideration for determining multiplier to ascertain the compensation. In support of his contention, learned counsel relied on recent case laws of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, and the case of New India Assurance Company Ltd. Vs. Gopali and Others, . He has further contended that there is also no strict formula that 50% should be deducted towards personal and living expenses if the deceased is a bachelor, as a rule of thumb and in appropriate cases deduction may be less than 50% to secure ends of justice. He has also contended that at the old age father is also entitled to be maintained by the earning son and there is no rule that the father should be always excluded from getting compensation for the death of his earning son. Learned counsel, concluded that the tribunal determined compensation at a lesser side and there is no reason to interfere in it. He further contended that the tribunal did not award any compensation towards pain and sufferings which the petitioners being parents have suffered for the death of their young earning son but since the petitioners did not challenge the award, they are not claiming any amount on that account. He, therefore, prayed for dismissal of the appeal with cost.

8. It is fairly established that Narayan Rupini, son of the claimants-respondent Nos. 1 and 2 herein, died due to motor vehicle accident and so, the claimants being the parents are entitled to get compensation. Petitioner No. 1, being the father of the deceased and aged about 55 years, since was dependent on the income of the deceased is also entitled to get compensation.

The Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, did not altogether exclude the entitlement of the father in claiming compensation. The Court held--

father, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and mother alone will be considered as a dependent.

In the case at hand, both the father and mother jointly filed the claim petition and petitioner No. 1, the father examined himself as PW 1 before the tribunal and in his deposition he prayed for granting him and his wife the compensation of Rs. 15,00,000/-. While the father was aged about 55 years and there is no evidence on record to show that he has any independent income to maintain himself, his claim of compensation for the death of his young son cannot be

thrown overboard.

9. The deceased was aged about 24 years at the time of accident. The petitioners placed on record the postmortem report of the deceased, which shows the deceased was aged 24 years at the time of accident. Oral evidence of the petitioner corroborates it. No other age proof certificate placed on record. The tribunal, as it appears, following the table prescribed in the 2nd schedule of the Motor Vehicles Act, 1988 applied the multiplier of 17 meant for the age group of 20 to 25 years. There has been a lot of change in determining the multiplier by Apex Court judgments and according to the latest position, a multiplier of 18 is applicable for the age group of victims between 21 to 25 years. In the case of Amrit Bhanu Shali (supra), in a case filed by the parents, for the death of their bachelor young son, aged about 26 years, the Supreme Court considered that a multiplier of 17 was rightly applied. In Para 18 of the judgment, the Court held thus:--

18. In the instant case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the Benefit of multiplier of 17 and bringing it down to the multiplier of 13.

10. The same principle followed in the case of Gopali and others (supra). In view of the decision of the Apex Court in the case of Amrit Bhanu Shali (supra), the argument advanced by learned counsel, Mr. Dhar and Mr. Gautam in respect of the multiplier, applied by the tribunal, cannot be accepted. Simultaneously since the judgment and award passed by the tribunal has not been challenged by the petitioners, I find no reason to disturb the finding of the tribunal in respect of multiplier.

11. Regarding the deduction towards personal and living expenses, learned counsel, Mr. Dhar & Mr. Gautam referred to the observation of Hon"ble Apex Court in the case of Sarla Verma (supra) and has submitted that 50% should be deducted from the income of the deceased since the deceased was a bachelor. In Sarla Verma (supra) the Apex Court in para 30, 31 and 32 has held thus:--

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family member is 4 to 6, and one-fifth (1/5th) where the number of dependent family

members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

12. In the case at hand, tribunal deducted 1/3rd from the amount calculated towards personal and living expenses of the deceased. There is no iota of evidence that except the petitioners any other members of the family were dependent on the income of the deceased. In the case of Sarla Verma (supra), the Apex Court has held that where the family of the deceased consist of widowed mother and large number of younger non earning brothers and sisters, his personal and living expenses may be restricted to 1/3rd and contribution to the family will be taken as 2/3rd. Same principle has been adopted in the case of Amrit Bhanu Shali (supra).

13. In the case at hand, there is no evidence that any other members of the family were dependent on the income of the deceased and so, deduction of 1/3rd as directed by the tribunal was not justified. The tribunal would deduct 50% from the amount calculated to determine just compensation. Learned counsel, Mr. Dhar & Mr. Gautam though have submitted that there is no documentary evidence regarding income, I cannot accept the submission since there is oral evidence and it is on record that the deceased was a labour by profession and in the absence of any documentary evidence about income, the tribunal committed no wrong in arriving at a decision applying guess work that deceased might had an income of about Rs. 3000/- per month and I find no unreasonableness in such finding of the tribunal.

14. In view of the discussions made above, the compensation is re-calculated thus:--

Rs. 3000 X 12 X 17 = Rs. 6,12,000/-. If 50% is excluded, the amount stands at Rs. 3,06,000/-. As I find the tribunal did not award any compensation towards pain and sufferings to the parents for the death of their young son. The claimant respondents did not challenge the judgment/award passed by the tribunal for nonpayment of compensation for pain and suffering. Since there is no appeal by the, claimants, no award can be made on that score. The tribunal awarded further amount of Rs. 2000/- towards funeral expenses, Rs. 2000/- towards transpiration and that amount is added. Thus total amount of compensation stands at Rs. 3,10,000/-. The appellant and respondent-insurance company are liable to make payment of the amount Rs. 3,10,000/- (Rupees three lakhs ten thousand) with 9% interest thereon from the date of presentation of the petition i.e. 06.10.2005.

15. I find nothing to disturb the finding of the tribunal that both the vehicles were equally responsible for the accident and therefore, the insurer of both the vehicles shall make payment of the compensation with interest thereon in equal share. The appeal is accordingly partly allowed and disposed of.

Send back the L.C. records along with a copy of this judgment.