

(1996) 01 PAT CK 0017
In the Patna High Court
Case No : M.A. No. 158 of 1994 (R)

United India Insurance Co. Ltd.

APPELLANT

Vs

Kanak Paul and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

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

Citation : (1996) 44 BLJR 473 : (1996) 2 PLJR 418

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Eqbal, for the Appellant; G.N. Chandra, for the Respondent

Judgement

P.K. Deb, J.—This appeal has been preferred by the above-named insurance company u/s 173 of the Motor Vehicles Act, 1988 against the award passed in favour of the respondents by the Additional District Judge, Dhanbad in Title (M.V.) Suit No. 154 of 1992.

2. The compensation claim was filed by the respondent No. 1 Kanak Paul for herself and on behalf of her minor children on account of death of Ambuj Chandra Paul, husband of the plaintiff-respondent Kanak Paul. Admittedly, Ambuj Chandra Paul was an employee in the F.C.I and while going towards Sindri Basti from Domgarh on his scooter on 23.10.1992 at 5.30 p.m. he met with an accident on being dashed by a truck bearing registration No. BIR 3291 due to rash and negligent driving of the driver of the offending truck. The injured sustained multiple injuries and he succumbed to his injuries on the same date at F.C.I. Hospital. A police case was also registered being Sindri P.S. Case No. 138 of 1992 under Sections 279 and 304A of the Indian Penal Code against the owner and driver of the said truck. Admittedly, the offending truck was insured at the relevant time of occurrence with the appellant insurance company.

3. The claim case was contested by the insurance company and after considering the evidence adduced from the side of the plaintiffs-respondents and after

assessment of the dependency of the respondents on the deceased Ambuj Chandra Paul, learned Tribunal awarded compensation of Rs. 3,84,000/- in favour of the respondents.

4. Mr. Eqbal appearing for and on behalf of the appellant although raised various grounds regarding the liability of the insurance company about the accident which was caused by the driver and owner on violation of terms and conditions of the insurance policy, did not press all those points except the quantum of compensation made in the case. He has submitted that the learned Tribunal did not consider the recent principle enunciated by the Supreme Court regarding calculation and assessment of the compensation to be awarded on the basis of the dependency calculated in individual cases. He has referred to General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and also Jayantilal Ambalal Parmar Vs. The Gujarat State Road Transport Corporation and Another, which relies on the principle enunciated by the Apex Court in the above mentioned judgment. It was held by the Apex Court that the multiplier method of assessment of compensation is proper, logically sound and well-established method and departure can be made from the multiplier method only in rare and extraordinary circumstances and on very exceptional cases. But it held that the multiplier method should be applied in such a way that the dependency calculated in money value should fetch the same amount of dependency to the applicants if the awarded amount is deposited in bank or other financial institutions in fixed deposit.

5. In the present case also the multiplier method has been applied but the learned Tribunal used the multiplier as 16 calculating the life expectancy of the deceased as 16 years more. According to Mr. Eqbal, as per the judgment of the Apex Court in the age of 39 years, the multiplier of 9 was used. In the present case also at the time of death, the deceased was aged about 40 years and as such according to him, at best 9 could be applied as multiplier so that the amount of compensation can be assessed at Rs. 2,00,000/- which would fetch Rs. 2,000/- per month which has been calculated as the dependency of the claimants.

6. On the other hand, Mr. G.N. Chandra appearing for and on behalf of the respondents have referred to para 13 of the same judgment of the Apex Court and submitted that the claimants-respondents are entitled to more compensation amount as the dependency calculated by the learned Tribunal was improper on the face of it, in view of the way the same has been calculated and determined in the said judgment. The salary of the deceased was determined on the basis of Exh. 1 series in the case and the net amount coming into the hands of the petitioner was determined on the basis of Exh. 1 series as Rs. 4,000 per month and by presumption it was held that out of that amount of Rs. 4,000/- half of the amount, i.e., Rs. 2,000/- must have been spent by the deceased for his personal expenditure. This seems to be not proper, such presumption has not been drawn

on the basis of any evidence on record. Normally one-third of the salary or net income is presumed to be spent for the personal expenditure of the incumbent and the rest two-thirds amount are generally held to be proper dependency of the family members. In that view of the matter, the dependency ought to have been determined at Rs. 2,667/- per month. There is scope of promotion during his lifetime when he was only 40 years of age at the time of death, but there is also scope of his uncertainty of life and normally in case of using of multiplier method, life uncertainty and promotional avenues are taken to be merged into the multiplier method itself.

7. The claimant No. 1 has got four minor daughters and one minor son. In the State of Bihar, when a person has got daughters they lead a very simple life to keep money for the marriage of the daughters in deposit. Considering all these matters I feel that in the present circumstances of the case, the monthly dependency should be fixed at Rs. 2,800/- and then yearly dependency comes up to Rs. 35,600/- and by using multiplier of 9 compensation comes up to Rs. 3,15,400/-. But if that amount is deposited in any bank in fixed deposit that will fetch more than three thousand per month and in my view the multiplier of 8 should be proper when the compensation comes up to Rs. 2,84,800 and if the same amount is deposited in fixed deposit, the same amount of dependency of Rs. 2,800/- would be fetched. The mental agony of the claimant No. 1 and her deprivation of conjugal life was also to be considered in the facts and circumstances of the case when she is to bring up five minor children out of whom four are daughters. So, the compensation is fixed at Rs. 3,00,000/- taking it a round figure and in my view that would be proper compensation in the present nature and circumstances of the case.

8. Thus, the appeal is partly allowed and compensation is fixed at Rs. 3,00,000 (three lakhs) only. The interest as ordered by the learned Tribunal is found to be proper and justified and the claimant would be entitled to get interest at the rate of 12 per cent per annum from the date of lodging of the compensation claim till the date of payment. The amount of Rs. 25,000/- already deposited by the appellant and withdrawn by the claimant-respondents vide order dated 7.8.1995 shall be deducted from the compensation amount and also towards calculation of interest from the date of deposit of amount.

9. In the result, the appeal is partly allowed by minimising the compensation amount to the extent as mentioned above.