
(2002) 09 CAL CK 0031
In the Calcutta High Court
Case No : F.M.A.T. No. 1510 of 1997

United India Insurance Co. Ltd.

APPELLANT

Vs

Sri Sitanath Chowdhury and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) 2 ACC 751 : (2003) ACJ 765 : (2003) 1 AnWR 560 : (2003) 1 CALLT 248

Hon'ble Judges : Rejandra Nath Sinha, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Kamal Krishna Das, for the Appellant;Krishanu Banik, for the Respondent

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—This appeal arises out of an award passed by the Motor Accident Claims Tribunal u/s 166 of the Motor Vehicles Act, 1988, assessing the compensation at Rs. 1,30,000/-.

2. The claim application was filed by the parents of victim Sandip Chowdhury who died by reason of a motor accident due to rash and negligent driving of the offending vehicle. The Tribunal found that the rash and negligent driving of the offending vehicle caused the accident and the death of the victim. Considering the age of the victim multiplier has been applied by the tribunal at 16 taking into consideration his earning as Rs. 1850/- per month as salary. Age of the victim at the time of death was found as 27 years.

3. The appeal was filed by the Insurance Company contending that in such facts the age of the parents being the applicants is required to be considered for the purpose of applying the multiplier. This only contention of the appellant insurer has been contested by the learned advocate for the claimants.

4. Therefore, this only contention raised in the appeal requires consideration.

5. We find that Mr. K.K. Das, learned counsel for the appellant relied on certain judgments in support of his contention, wherein the Apex Court has considered the above aspect. Mr. Banik, learned counsel for the claimants also relied on certain judgments in support of his contention that multiplier has to be applied considering the age of the victim. It is further contended that if the structural formula of the second schedule to the Motor Vehicles Act, 1988 is to be applied, it has to be remembered that the same only considered the age of the victim.

6. On behalf of the claimants reliance was placed on the judgment in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . In the case before the Apex Court the application was filed by the parents of the victim. But on a perusal of the said judgment it appears that though multiplier has been applied considering the age of the victim only and not of the parents applicants, but this question raised in the present appeal was not considered by the Bench deciding the said matter.

7. The next case cited on behalf of the claimants is of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, . The observation In the said judgment relied on by the learned counsel for the claimants is as follows:

"The jurisprudence of compensation for motor accidents must develop in the direction of no fault liability and the determination of the quantum must be liberal not niggardly since the law values life and limb in a free country in generous scales."

8. The above observation was made as a general principle and in the said judgment the matter which was under consideration was question of application of limitation/delay in matters involving claim for compensation. The aspect which is presently under consideration as regards application of multiplier taking into consideration either the age of the victim or the age of the claimants not being under consideration in the said judgment, the same does not help deciding the present matter.

9. The same position, we find with regard to the other judgment cited by the learned counsel for the claimants as decided in the case of Kader Kunju v. Maheswaran Pada Nair, reported in 2000 (1) TAC 202. In this case also the Apex Court while deciding the matter though applied multiplier taking into consideration the age of the victim but the question as regards its applicability and the law relating thereto has not been decided in this case. Further reference was made by the learned counsel for the claimant in this respect as decided on August 22, 2002 by a Division Bench of this Court in FMA No. 233 of 2001 (National Insurance Co. Ltd. v. Urmila Sardar), FMA No. 1572 of 2000 (Raghunath Shaw v. United India Insurance Co. Ltd.) decided on November 28, 2001, FMA No. 275 of 2001 (Smt. Kaushallya Biswas v. National Insurance Co. Ltd.) decided on September 6, 2001, Fatema Mutul Bibi v. Oriental Insurance Co. Ltd., reported in 2001 3 TAC 560, Prafulla Das v. New India Assurance Co. Ltd., reported in 2002 (3) TAC 560 and some judgments of the other High Courts,

which do not help us in deciding the present appeal as the law presently under consideration was not decided in any of the said cases.

10. On behalf of the insurer law has been cited as decided in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, .

11. Considering the law in this regard, we find that with regard to calculation of loss of dependency on the death of a victim, a member of the family, a suitable multiplier is required to be applied. The basic principle governing the assessment of compensation has been considered in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . The relevant observation of the Court in the said case is as follows:

"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last."

12. In the case of Trilok Chandra (supra) the above view was accepted. The structured formula in second schedule to the Motor Vehicles Act, 1988 was also taken into consideration and though it was held to be a safeguard, the mistake in the structured formula was also pointed out. The background law was taken into consideration. The finding of the said judgment relevant for the present purpose is as follows:

"It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor dies at the age of 45 and his dependents are his parents, the age of the parents would also be relevant in the choice of multiplier. What we propose to emphasise is that the multiplier cannot exceed 18 years purchase factor."

13. This law was also considered by a Division Bench of the Apex Court very recently in the case of H.S. Ahmmmed Hossain (supra). The relevant portion of the said judgment is as follows:

"Learned counsel then submitted that under Second Schedule to the Act providing compensation based on a formula, the multiplier which was applicable was 15 and not 13 as age of mother of victim Vazeer was 45 years in which case the correct multiplier should have been 15 and not 13 whereas in the case of victim Refeeq, as age of his mother being 40 years, the correct multiplier should have been 16 and not 14. On the other hand, learned counsel appearing on

behalf of the respondents submitted that compensation has been awarded in accordance with the second schedule. 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. Vs. M/s. Swaranlata Das and others, , it was observed that "the appropriate method of assessment of compensation is the method of capitalization of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower."

14. We find thus from various observations in various judgments that structured formula under the second schedule has been held to be a safeguard for assessing the compensation. But in applying the said formula the aspect which is required to be considered is the life span of the victim when the claimants are younger to him as the victim would have helped the dependents during his working period only and the life expectation of the dependents will not be a factor relevant. But when the victim is younger than the claimants dependents, the age of the dependents becomes important as they would have been receiving the assistance from the victim during their life time and the working life of the victim has no relevance in such facts.

15. Therefore, following the law as aforesaid, we find that the multiplier may be applied according to the age of the victim or the age of the claimants whichever is higher. In such circumstances, in the present case also we accept the contention of the insurer and applying the multiplier on the basis of the age of the parents, the multiplier is required to be assessed. Therefore, the impugned award is set aside and the matter is sent back to the Tribunal for the purpose of deciding the quantum of compensation only upon assessing respective ages of the two claimants and calculating the compensation applying the multiplier on the basis of the age of the younger of the two parents maintaining the other findings of the Tribunal, Such decision is to be taken within a period of two months from the date of receiving the records by the Tribunal from this Court. The lower Court records be sent down forthwith and if the respondent deposits the special messenger cost, the records be sent down by special messenger.

Later: 19.09.2002

The appellant will be entitled to withdraw the amount already deposited, if any, in terms of the award.

Let urgent xerox certified copy of the order, if applied for by the parties, be supplied.

R.N. Sinha, J.

16. I agree.