
(2019) 01 CAL CK 0156
In the Calcutta High Court

Case No : Can 5586 Of 2018 In Adms. C. Appl Order (Fmat) No. 503 Of 2014

United India Insurance Company Limited	APPELLANT
Vs	
Rubiya Bibi & Ors.	RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 23, 163A, 166

Citation : (2019) 01 CAL CK 0156

Hon'ble Judges : Harish Tandon, J;Subhasis Dasgupta, J

Bench : Division Bench

Advocate : Rajesh Singh, Krishanu Banik

Final Decision : Dismissed

Judgement

We proposed to take up the appeal for final disposal. At this juncture it has been communicated to us by the respondents that a cross-objection being COT 36 of 2017 has been filed. Though the cross-objection is not listed today we treat the same as on day's list so that the appeal can be conveniently disposed of.

It is conceded by the learned Advocate for the respondents that the cross-objection has been filed beyond the statutory period provided therefor without accompanying an application for condonation of delay.

The learned Advocate for the respondents insists the court to dispose of the appeal expeditiously, for which an application being CAN 5586 of 2018 has been filed. Ultimately, the learned Advocate for the respondents submits that his client does not wish to press the cross-objection.

In view of the above, the cross-objection being COT 36 of 2018 stands dismissed for non-prosecution.

Mr. Singh, the learned Advocate, appearing for the appellant submits that the instant appeal was filed challenging the impugned award on two counts; firstly, a suitable multiplier is to be applied taking into account the age of the claimant

and not the deceased; secondly, the tribunal made a guess work in determining the income of the deceased without any corroborative evidence in this regard.

Admittedly, the child of the claimants/respondents died of an accident on July 5, 2011 while coming from Fatehpur at National Highway 41 in his bicycle. It is further stated that the offending vehicle, which was coming from Haldia at a very high speed, dashed the victim from behind, as a consequence whereof he died on the spot. The claim was made for Rs.5,00,000/-, on the basis that the said deceased was bachelor aged 22 years and was earning Rs.6,000/- per month as mason. The tribunal did not accept that the defence taken by the insurance company that the offending vehicle was not involved in the accident and ultimately awarded the compensation taking into account a sum of Rs.3,300/- as income per month. The Tribunal determined the compensation by applying suitable multiplier on the basis of the age of the deceased, which according to the insurance company is not in consonance with law.

The aforesaid proposition of law does not appear to be correct in view of the judgment of the Special Bench rendered in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. reported in (2009) 6 SCC 121, wherein it is held:-

41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A 23 of MV Act. In cases falling under section 166 of the MV Act, Davies method is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

There is no ambiguity in our mind that in order to apply the suitable multiplier, the age of the deceased is the only factor and it would be preposterous to suggest that the suitable multiplier should be found on the age of the claimants. In view of the law enunciated in the above report, we do not find any substance in the point taken by the insurance company.

Admittedly the quantum of compensation was determined on the basis of a notional income of Rs.3,300/-per month. The deceased, who is a skilled mason, appears to be a daily rated worker, earns his livelihood being engaged on a daily basis. It is very difficult for the claimants to adduce evidence in support of his income. There is no difficulty in applying the robust commonsense and the experiences gathered in life in arriving that the notional income, which ordinarily a person of such avocation earns.

Though much has been stated by Mr. Singh, learned Advocate, appearing for the appellant/company, on this count, we do not find that the income determined by the Tribunal needs any interference, more particularly, bearing in mind the price index and the inflation prevalent at the relevant point of time. To sum up, we do not find any merit in the aforesaid pleas.

It is now pointed out by the appellant that in compliance of an order passed in the instant appeal, a sum of Rs.2 lakhs have already been deposited in the bank account of the claimants and the balance amount of compensation with accrued interest is deposited in this court.

Though the learned Advocate for the respondents denies and disputes the transfer of Rs.2 lakhs in the bank account of the claimants but we do not find any document having produced by the respondents in this regard. However, the learned Advocate for the appellant in his usual fairness submits that in the event, the said amount i.e. Rs.2 lakhs have not been deposited in the bank account of the claimants, the same would be deposited within 10 days from date.

So far as the amount deposited in this court is concerned, liberty is granted to the claimants to make an application before the Registrar General disclosing the details of the bank accounts held by them jointly in any bank within two weeks from date.

The Registrar General shall verify the identity of the claimants and after being satisfied shall issue a cheque in their name with caveat that the said cheque can only be encashed only in the said bank account.

In the event, there is any shortfall, the insurance company is directed to transmit the same in the bank account of the claimants, if so disclosed, within two weeks from the date of such communication.

The appeal is thus dismissed. However, there shall be no order as to costs.

In view of the dismissal of the appeal the connected application being CAN 5586 of 2018 also stands dismissed.