

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5179 OF 2012
(Arising out of SLP(C)No. 11345 of 2007)

NEW INDIA ASSURANCE CO.LTD.

...Appellant

VERSUS

GOPALI & ORS.

...Respondents

O R D E R

Leave granted.

India is acclaimed for achieving a flourishing constitutional order, an inventive and activist judiciary, aided by a proficient bar and supported by the State. However, the Courts and Tribunals, which the citizens are expected to approach for redressal of their grievance and protection of their fundamental, constitutional and legal rights, are beset with the problems of delays and costs. In a country where 36 per cent of the population live below the poverty line, these deficiencies in the justice delivery system prevent a large segment of the population from availing legal remedies. The disadvantaged and poor are deprived of access to justice because of the costs of litigation, both in terms of actual expenses and lost opportunities, and the laudable goal of securing justice - social, economic and political enshrined in the Preamble to the Constitution of India remains an illusion for them. The infrastructure of Courts and the processes which govern them are simply inaccessible to the poor. The State, which has been mandated by Article 39A of the Constitution to ensure that the operation of the legal system promotes justice by providing free legal aid and that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, has not been able to create an effective mechanism for making justice accessible to the poor, downtrodden and disadvantaged. In last two and a half decades the institution of the legal services authorities has rendered yeoman's service in the field of providing legal aid to the poor but a lot is required to be done for ensuring justice to economically deprived section of the society and those who suffer from other disabilities like illiteracy and ignorance.

We have prefaced the disposal of this petition, filed against order dated 22.3.2007 passed by the Division Bench of the Rajasthan High Court whereby the special appeal filed by the appellant against the judgment of the learned Single Judge was dismissed as not maintainable, by making the aforementioned observations because in last almost 20 years the claimants - the aged parents, wife and five children of Nanag Ram, who became a victim of road accident in 1992, must have exhausted all their resources in prosecuting and contesting the litigation till the stage of High Court and they must not have been left with money sufficient for engaging an advocate in this Court and also because in last almost five years, during which the special leave petition remained pending in this Court, they must have lost all hopes to get justice. The learned Single Judge of the High Court had allowed the appeal filed by the dependants of Nanag Ram under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') and enhanced the compensation awarded by Motor Accident Claims Tribunal, Jaipur (for short, 'the Tribunal') by an amount of Rs.4,85,000/- and directed the appellant to pay the enhanced compensation with interest at the rate of 12 per cent per

annum from the date of filing the claim petition till 31.12.2000 and at the rate of 9 per cent from

1.1.2001 till the payment thereof, but on account of ex-parte interim order passed by this Court on 23.7.2007, the claimants could get a paltry sum of Rs. 2 lakhs and they perhaps thought that it will not be worthwhile to spend money for contesting the special leave petition filed by the appellant. This is perhaps the thinking of many thousands of poor litigants, who succeed in the Courts below and the High Courts but cannot afford the cost and expenses of contesting litigation in the highest Court of the country and suffer silently in the name of the Almighty God by treating it as their destiny.

Nanag Ram died in a road accident which occurred on 9.3.1992 when his motorcycle was struck by a truck owned by respondent No.10-Ram Chandra Paliwal and driven by Raghu Nath, whose name was deleted from the array of parties vide order dated 2.4.2009. At the time of accident, Nanag Ram's age was about 36 years and he was employed as a Machine Operator in National Engineering Company Ltd., Jaipur for a salary of Rs.4,000/- per month. The dependants of Nanag Ram filed a petition under Section 166 of the Act for award of compensation to the tune of Rs.24 lakhs by alleging that their bread winner had died due to rash and negligent driving of the truck by

Shri Raghu Nath. While the owner of the truck and its driver did not file a reply to contest the claim petition, the appellant raised all possible objections. In the reply filed on behalf of the appellant it was prayed that the claimants be directed to prove whether the driver of the offending vehicle was in the employment of the owner and had a valid and effective driving licence. The appellant also sought a direction to the owner for production of the original insurance policy and, as is usually done in such cases, it claimed that the accident was not caused due to rash and negligent driving of the truck. An alternative plea taken by the appellant was that if an award is passed, the contributory negligence of both the drivers be determined.

After considering the pleadings and evidence of the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the truck. The Tribunal also accepted the claimants' assertion that the deceased was employed as a Machine Operator in National Engineering Company, Jaipur. The Tribunal then referred to the evidence produced by the claimants on the issue of monthly income of the deceased and held that it could be taken as Rs.3,000/- per month. After deducting 1/3rd

towards personal expenses and applying the multiplier of 10, the Tribunal concluded that the claimants are entitled to total compensation of Rs.2,55,000/- with interest at the rate of 12 per cent per annum w.e.f. 5.9.1992.

The learned Single Judge of the High Court took cognizance of the fact that the employer was annually paying bonus to the deceased at the rate of 20 per cent of his salary, referred to the judgment of this Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (1994) 2 SCC 176 and held that the claimants are entitled to total compensation of Rs.6,45,300/-. The learned Single Judge made additions of small amounts towards pains and sufferings, loss of love and affection, consortium, security and protection and directed the appellant to pay an additional amount of Rs.4,85,000/- with interest at the rate of 12 per cent per annum.

The special appeal filed by the appellant was dismissed by the Division Bench of the High Court by relying upon Section 100A of the Code of Civil Procedure.

On 23.7.2007, this Court ordered notice on the special leave petition and indirectly stayed the judgment of the learned Single Judge of the High Court. For the sake of reference that order is extracted below:

"Issue notice.

Without prejudice to the claims involved, let the petitioner deposit a sum of Rupees three lakhs with the concerned MACT within four weeks from today. A sum of Rupees two lakhs shall be permitted to be withdrawn by the claimant without furnishing security."

As is the fate of large number of other special leave petitions, this petition was not listed before the Court for next five years for effective hearing and the appellant continued to enjoy the benefit of ex-parte interim order. For the first time, the case was listed before the Registrar on 15.10.2008 i.e. after almost one year and three months of the issue of notice. The Registrar noted that notice has not been served upon respondent Nos. 1 to 8 and 10 and an application has been filed for deleting respondent No. 9 from the array of parties. On 2.4.2009, the application was allowed by the Chamber Judge. For next two years and five months, the file of the case did not see the light of the day. On 14.9.2011, the case was listed before the Registrar, who recorded the statement of the appellant's counsel that he does not want to bring on record the legal representatives of respondent Nos. 1 and 3. On 12.10.2011, the matter was again listed before the Registrar, who directed that the matter be placed before the Chamber Judge. When the matter was listed before the Chamber Judge, he noted that the legal representatives of respondent Nos. 1 and 3 are already on record. It should be a matter of concern for those who are associated with this institution as to why an ex-parte interim order passed by the Court should continue to operate for years together without the matter being listed for effective hearing. If the claimants had been members of economically affluent sections of the society, they would have engaged an eminent advocate and taken steps for hearing of the matter at an early date but, as noted earlier, they do not have the financial capacity and resources to engage any advocate for contesting the special leave petition.

We have heard learned counsel for the appellant and carefully perused the record.

In our view, the appellant's challenge to the impugned order is meritless and the appeal is liable to be dismissed. We are also convinced that this is a fit case in which the Court should exercise power under Article 142 of the Constitution and enhance the compensation determined by the High Court by applying appropriate multiplier.

We shall first consider whether the High Court was justified in not applying the rule of 1/3rd deduction towards personal expenses of the deceased.

In *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, the two Judge Bench made an endeavor to standardise the parameters for determination of the compensation payable by the insurer and / or the owner of the offending vehicle. While dealing with the issue of deduction towards personal expenses, the Court made the following observations:

"We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependants. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. The claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one.

It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline."

The Bench then referred to the judgments in Kerala State Road Transport Corporation v. Susamma Thomas (1994) 2 SCC 176, U.P.SRTC v. Trilok Chandra (1996) 4 SCC 362 and Fakeerappa v. Karnataka Cement Pipe Factory (2004) 2 SCC 473 and held:

"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 standardised 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 members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

The issue was recently considered in Santosh Devi v. National Insurance Company Ltd. and others (Civil Appeal No.3723 of 2012 decided on 23.3.2012) and it was observed:

"It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs.1,500/- to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family."

National Sample Survey Report No. 527 on Household Consumer Expenditure in India 2006-07, which has been prepared after conducting thorough research on the subject contains the figures of monthly per capita expenditure (MPCE) for various classes. These are extracted below:

Table 5R: Break-up of total monthly per capita consumer expenditure (MPCE) by groups of items for households in different MPCE classes			
All-India			
item group			
All-India Rural			
no. of hhs reporting consumption item group	monthly per capita expenditure (Rs.) on item group for households in MPCE class (Rs.)		
All-India			
		0	335 -
		-	395
		3	
		3	
		5	

ITEM NO.1/1

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14486/2007

(From the judgement and order dated 18/04/2007 in DBSA No.8/2005 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

NEW INDIA ASSURANCE CO.LTD.

Petitioner(s)

VERSUS

MEHAR CHAND JAIN AND OTHERS

Respondent(s)

(With prayer for interim relief and office report)

Date:05/07/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) None

For Respondent(s) Ms. Christi Jain, Adv.

Ms. Pratibha Jain, Adv.(Not present)

UPON hearing counsel the Court made the following

O R D E R

This petition is directed against order dated 18.4.2007 by which the Division Bench of the Rajasthan High Court held that the Special Appeal filed by the petitioner against the judgment of the learned Single Judge is not maintainable.

Although, no one has appeared on behalf of the petitioner, we do not consider it proper to postpone final adjudication of the matter which has remained pending for last almost five years and the petitioner has enjoyed the fruits of interim order passed by this Court.

The petition filed by respondent Nos. 1 to 4 under Section 166 of the Motor Vehicles Act, 1988 for award of compensation in lieu of the death of Surendra Kumar Jain was disposed of by Motor Accident Claims Tribunal, Jaipur City vide award dated 13.9.1994, the operative portion of which reads as under:

"Claim Case No. 914/89 (157/93) the final award is passed in the given manner that the claimants are entitled compensation of Rs.4,90,000/- as compensation from the respondent No. 1 and 3 jointly and severally (respondent No.2 has been deleted). On the awarded amount the interest will be payable @ 12% per annum from the date of finding of the claim petition (i.e. dated 2.9.89). The award is payable within a period of two months and otherwise the rate of interest payable will be 15% P.A. after two months on the awarded amount.

From the awarded amount claimant Shri Mehar Chand and Smt. Kamla Devi will jointly received Rs.50,000/-. From the amount received by them amount of Rs.20,000/- will be deposited from one year and rest of the amount will be deposited in the joint saving account.

Claimant Kumari Priyanka will receive Rs.40,000/- as she is minor, therefore, till the time she attains majority the amount will remain deposited in the fixed deposit.

From the awarded amount of Rs.4,00,000/- as well as the interest amount will be payable to Smt. Rajeshwari. From the amount received by her Rs.30,000/- each will be deposited in fixed deposit for the year 1,2,3,4,5,7,9,11,13,15,17 and 20 years respectively and rest of the award amount will be deposited in her saving account.

The award will be payable only in account of the claimant through cheque/draft which will be in the name of Smt. Rajeshwari."

On an appeal filed by respondent nos. 1 to 4, the learned Single Judge of the High Court enhanced the compensation of Rs.36,12,500/-.

The petitioner challenged the judgment of the learned Single Judge by filing an appeal under Section 18 of the Rajasthan High Court Ordinance.

