REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3317-3318 OF 2009
(Arising out of SLP (C) Nos.27792-27793 of 2008)

Raj Rani & Ors. … Appellants

Versus

Oriental Insurance Co. Ltd. & Ors. … Respondents

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Claimants before the Motor Vehicles Accident Claims Tribunal (for short, 'the Tribunal') are before us aggrieved by and dissatisfied with a judgment and order dated 10.6.2008 passed by the High Court of Uttarakhand at Nainital in AFO No.101 of 2006 and AFO No.107 of 2006.

3. The deceased Diwan Pal Singh was driving a Maruti car bearing registration No.UHP-4787 belonging to one Gopal Sharan Paliwal from

Bareilly to Haldwani. He was an Assistant Engineer working in Uttar Pradesh Avas Evam Vikas Praishad, a statutory organisation. He was accompanied by one T.K. Pandey, one of his colleagues.

4. Allegedly, a truck bearing registration No. UP 25-6235 was parked in middle of the road. It did not put on the lights. Claimants contend that although the car was being driven at a nominal speed of 40 km per hour, owing to another vehicle coming from the other side and as the parking lights of the tuck being not on, it was sighted at the last minute. Deceased tried to take the car towards left side but it dashed against the truck resulting in the death of Diwan Pal Singh. A sum of Rs.50,50,000/- was claimed, inter alia, on the premise that his monthly income was Rs.17,431/- per month and he was aged only 42 years.

5. The claim petition was filed by his children as also his parents, Shri Chandra Singh pal and Smt. Chandra Devi. Shri Chandra Singh Pal has since expired. Before the Tribunal, one of the appellants was examined who stated that the salary of the deceased was about 17,400/- per month and he was going to be promoted to the post of Executive Engineer. It was furthermore stated that his wife had not received any family pension. T.K. Pandey, who was accompanying the deceased in the said car was examined as PW2. He, in his deposition, stated :

> "This accident occurred due to negligence of Truck Driver. Diwan Pal Singh was going to be promoted on the post of Executive Engineer, if promotion would have taken place then would have received salary of Rs.25,000/- per month."

6. He was not cross-examined on the question with regard to the income of the deceased as also the fact that he would have been promoted to the post of Executive Engineer very soon.

The learned Tribunal was of the opinion that there was a contributory negligence on the part of the deceased also. As regards the amount of compensation, it took into consideration the net salary at Rs.11,625/- and dearness allowance at Rs.4,766/- totaling Rs.16,391/-. It applied the multiplier of 15 on the basis whereof the amount of loss of subsistence worked out to be Rs.29,50,380/-. Out of the said amount 1/3rd was deducted towards personal expenses of the deceased. A further 1/3rd amount was deducted on premise that compensation was being paid in lump sum.

7. Both, the Insurance Company as also the appellants, preferred appeals thereagainst. The High Court, by reason of the impugned judgment, opined that both the drivers of the car as also the driver of the truck having contributed to the accident, the extent of contributory negligence should be calculated at 50% each.

With regard to the amount of compensation, it was held :

> "It has come on record that both the vehicles were insured with Oriental Insurance Company Limited. The Tribunal has given a finding that Oriental Insurance Company Ltd. is liable to pay the total amount of compensation shared by both the vehicles involved in the accident. This finding of the Tribunal is perverse as the deceased was the owner of the offending car and he himself was driving the car at the time of accident, therefore, he cannot be termed as third party and hence the claimants cannot be compensated for the death of the deceased by the insurer. Further, the claimants cannot get the compensation upto the extent of 50% each out of total amount of compensation on account of rash and negligence on the part of deceased/driver of Maruti car. Thus, the claimants are entitled to get 50% of the entire amount of compensation i.e. Rs.6,55,640/- plus Rs.2000/- towards funeral expenses and Rs.5000/- towards loss of love and affection = Rs.6,62,640/- (rounded Rs.6,63,000/-). The conditional interest imposed by the Tribunal is also liable to be set aside and I am of the view that the amount of compensation awarded by this Court in the Appeal i.e. Rs.6,63,000/- shall be paid by the insurer of the offending Truck along with interest @ 7.5% per annum with effect from the date of filing the petition till the date of actual payment instead of conditional interest imposed by the Tribunal in the impugned judgment and award."

So far as the appeal preferred by the claimants-appellants is concerned, it was merely stated :

> "As far as AO No.101 of 2006 filed by claimants is concerned, learned counsel for the claimants-appellants has raised the argument that the Tribunal has awarded a meager amount and the same should be enhanced. He has further

> submitted that the amount of compensation has been awarded by the Tribunal on take home salary, while it should have been awarded on gross salary. He has also submitted that the Tribunal has awarded conditional interest whereas the interest should be awarded from the date of filing the petition."

8. Mr. Ashwani Gard, learned counsel appearing on behalf of the appellant, would urge :

1) The High Court committed a serious error in deducting the amount of 1/3rd twice over.

2) The Tribunal as also the High Court committed a serious error in opining that the deceased Diwan Pal Singh was driving the vehicle negligently or the extent of his contributory negligence was 50%.

3) In computing the amount of compensation, all allowances payable to the deceased should have also been taken into consideration.

4) The Tribunal as also the High Court should have taken into consideration, the future prospects of the deceased as well.

9. Mr. Atul Nanda, learned counsel appearing on behalf of the respondent, on the other hand, would contend :

i) Appellant having not made any submission before the High Court with regard to the contributory negligence or future prospects of the deceased, this Court should not interfere with the impugned judgment.

ii) The question as regards contributory negligence being essentially a question of fact, the same does not warrant any interference by this Court.

iii) In any event, if the multiplier indicated in the Second Schedule appended to the Motor Vehicles Act, 1988 is applied, the question of consideration of payment of any higher amount on the basis of a future prospect would not arise.

10. The fact that the deceased was getting a salary of Rs.17,431/- is not in dispute. Apart from the dearness allowance, if other allowances were payable which were beneficial to the entire family, the same should have been taken into consideration for the purpose of computation of the annual income. It was so held in National Insurance Company Ltd. v. Indira Srivastava & Ors. [(2008) 2 SCC 763].

11. The deceased was aged about 42 years. If the depositions of the witnesses examined on behalf of the claimants were to be believed and we see no reason as to why they should not be, his future prospect also could not have been ignored for the purpose of determining the annual income.

For the said purpose, immediate future prospect would be a relevant factor. It is possible in a given case, where the chance of promotion is remote or the deceased was at the end of his carrier, his future prospect would be kept out of consideration. But, evidently, he was to be promoted to the post of Executive Engineer. If he was to be so promoted, his income would have been around 25,000/- The said factor, therefore, was required to be considered. [See General Manager, Kerala State Road Transport Corporation, Trivendrum v. Susamma Thomas (Mrs.) & Ors. [(1994) 2 SCC 186] and Smt. Sarla Dixit & Anr. v. Balwant Yadav & Ors. [(1996) 3 SCC 179].

12. Mr. Nanda may be correct to some extent that for the purpose of computation of the total amount of compensation under Section 163A of the Motor Vehicles Act, the future prospect may not be of much relevance. But in a case where claim petition has been filed in terms of Section 166 of the Act, the same would, in our opinion, be a relevant factor. Mr. Nanda may also be correct that this aspect of the matter has not been considered by the High Court. However, keeping in view the fact that such a contention had all along been raised by the claimants even before the Tribunal and evidences have not been adduced in respect thereof on their behalf, it is difficult to ignore the said contention of the appellants.

13. It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 166 of the Act speaks about grant of just compensation. The court's duty being to award just compensation, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.

In Nagappa v. Gurudayal Singh & Ors. [(2003) 2 SCC 274], this Court has held as under :

> "7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is--it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made **(**a**)** by the person who has sustained the injury; or **(**b**)** by the owner of the property; or **(**c**)** where death has resulted from the accident, by all or any of the legal representatives of the deceased: or **(**d**)** by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to Sub-section (1), all the legal representatives of the

> deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is Sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

14. The deceased died at a very young age. He being highly qualified could have been promoted to higher posts. Although the multiplier specified in the Second Schedule appended to the Motor Vehicles Act are stricto sensu not applicable in a case under Section 166 of the Act, it is not of much dispute that wherever the court has to apply the appropriate multiplier having regard to several factors in mind, one of them would be the factor of a high income of the deceased. The family background as also the income of the family would also be a relevant factor.

15. The deceased, apart from his wife and children who were five in number, had to maintain the parents also. His father's age at the time of filing the claim application was 70 years. He expired during pendency of the proceeding. While making an endeavour to find the appropriate multiplier, one of the factors which may have to be borne in mind although not wholly relevant as to whether the other members of the family were

having independent income. There is nothing to show that the wife or children of the deceased as well as his parents had any independent income as on the date of his death. His family was not getting any family pension. We, therefore, are of the opinion that application of the multiplier of 15 cannot be said to be on a very higher side.

16. So for as the issue of "contributory negligence" is concerned, we may notice that the tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This court in Usha Rajkhowa and Ors. v. Paramount Industries and Ors. [Civil Appeal No.1088 of 2009 (arising out of SLP (C) No.16647 of 2008)] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that :

> "10. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors. reported in *(2002) 6 SCC 455*. That was also a case of collusion in between a Car and a truck. It was observed in Para 8:
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> > 'The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as `negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression

> "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong."

17. The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this court. In Sri Krishna Vishweshwar Hede v. The General Manager, K.S.R.T.C. *(*2008 ACJ 1617), this court upheld the judgment of the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in the ratio of 50:50 on the driver of the bus and the appellant. In this case, the truck was stationary. Some amount of negligence on the part of the deceased cannot be ruled out.

18. Hence in the insistent case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50% of the total amount of loss of dependency.

19. The question now arises for consideration is as to whether the Tribunal could have made a further deduction of 1/3rd from the amount of compensation on the rationale that the amount is being paid in lump sum.

We do not think so. Few decisions of this court may be noticed in this regard.

In National Insurance Co. Ltd. V. Swarnalatha Das [1993 Supp.(2) SCC 743], it is held :

> "This is all the reasoning in the judgment. We are afraid that the reasoning is incomplete and cannot by itself support the enhancement. The appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower. It is, no doubt, true that as a rough and ready measure, the method of aggregating the total expected income for the remainder of the life-expectancy with appropriate deductions towards uncertainties of life and for lump sum payments is also resorted to. But this method is now considered unscientific and is virtually obsolete. At all events wherever it is resorted to it would require to be cross-checked with the results of the appropriate and the more scientific method of capitalisation of the loss of dependency."

20. The practice of deduction for lump sum payments from the amount of compensation awarded in Motor Accident cases by the tribunal have been disapproved by this court in several other decisions. [(See Hardeo Kaur v. Rajasthan State Transport Corporation [(1992) 2 SCC 567)]; Renu Bala Kalitha v. Dhiren Chakravatty [(1998) 8 SCC 363]; and Urmilla Pandey v. Khalil Ahmad [(1994) 4 SCC 207].

Thus, the High Court as well as the Tribunal have erred in deducting a further 1/3rd from the amount of compensation on the reasoning of payment of lump sum amount.

21. It has furthermore to be borne in mind that apart from the amount of compensation and funeral expenses as also a partial sum towards the loss of consortium on the part of wife, no amount has been paid on other heads.

22. We, therefore, are of the opinion that the amount of compensation should be calculated at Rs. 17,431/- per month plus Rs.25,000/- considering his future prospects of promotion as an Executive Engineer divided by 2 for the purpose of calculating the loss of income, which should be multiplied by 12 and then Annual Income, multiplied by 15 which comes to Rs. 38,18,790/-. Further, as 1/3rd should be deducted towards personal expenses of the deceased, the financial dependency would come to Rs.25,45,860/- from which a further deduction of 50% shall be made by way of contributory negligence on the part of the deceased. Thus, the claimants are entitled to Rs.12,72,930/-. An amount of Rs.7000/- towards funeral Expenses and consortium shall be added making it Rs.12,79,930/- which is rounded off to Rs.12,80,000/- with interest throughout at the rate of 7½% per annum.

23. The appeals are disposed of on the above terms.

..……..…J.
[S.B. Sinha]

..……..…J.
[Dr. Mukundakam Sharma]

New Delhi;
May 06, 2009