

(1993) 09 GAU CK 0002

Gauhati High Court

Case No: M.A. (F) 1 of 1986

Diamond Slyn, Bruce Slyn and
Shirley Slyn

APPELLANT

Vs

Sardar Tahil Singh and The New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision: Sept. 3, 1993

Citation: (1993) 2 GLR 418

Hon'ble Judges: D.N. Baruah, J

Bench: Single Bench

Advocate: A.B. Choudhury, T.C. Sarmah and G.K. Dutta, for the Appellant; N.N. Saikia, V.K. Dewan, P. Deka, S. Mitra, M. Buzarbaruah and M.C. Barthakur, for the Respondent

Final Decision: Dismissed

Judgement

D.N. Baruah, J.

This appeal is directed against the judgment and award dated 18.9.85 passed by the Member, Motor Accident Claims Tribunal, Guwahati in Motor Accident Claims Case No. 27(K) of 1972 awarding a lump sum compensation of Rs. 50,000/- together with interest at the rate of 6% per annum calculable from the date of filing of the claim petition till realisation to the Appellant. It was further ordered that the above amount would be paid together with interest by New India Assurance Company Ltd. with whom the truck was insured during the relevant time. An amount of Rs. 500/- was also awarded to the Appellant as cost.

2. N.W. Slyn, husband of the 1st Appellant and the father of 2nd and 3rd Appellants died on 1st of May, 1971 at Gauhati Medical College Hospital out of the injuries sustained by him in the motor accident on 26.4.71 at G.N. Bordoloi Road near Bamunimaidam leaving behind the present Appellants as his heirs.

The case of the Appellants is that on 26.4.71 while N.W. Slyn was coming home in his scooter No. ASK 7794 for taking lunch, he was hit by Truck No. ASK 3530 loaded

with boulders which was coming from opposite direction. He was first treated in the Gauhati Refinery Hospital and then shifted to Gauhati Medical College Hospital where he succumbed to the injuries. At the time of his death he was about 40 years. 1st Respondent was the owner of the vehicle which was insured with 2nd Respondent. One Biswanath Singh was the driver of the said vehicle. After the death the Appellants filed claim petition claiming compensation of Rs. 1,20,000/- on account of death. Written statements were filed. Two issues were framed, namely, (1) whether the accident in question took place due to the negligence or carelessness of the driver of the vehicle and (2) whether the claimant is entitled to any compensation and if so, how much. The Tribunal decided the first issue in affirmative and in favour of the Appellant. So for the second issue is concerned the Tribunal held that a lump sum amount of Rs. 50,000/- would be adequate compensation. While granting such compensation the Tribunal held that he would have earned an amount more than Rs. 2,00,000/- in simple formula of 18 years multiplied by monthly income of 976.45 multiplied by 12 i. e. Rs. 2,10,913.20. The Tribunal further observed that at the time of death of N.W. Slyn left behind his wife and two sons aged about 18 years and 11 years. At the time of making the award, according to the Tribunal both the sons had attained majority and might have been earning their livelihood. Besides, the 1st Appellant was employed in a Montessori school as a teacher. She also used to do private tuition from which also she might have learned some money. Hence, the present appeal.

3. I have heard Mr. A.B. Choudhury, learned Counsel for the appellants, Mr. N.N. Saikia, learned Counsel for the 1st Respondent and Mr. V.K. Dewan for the 2nd Respondent.

4. Mr. Choudhury submits that the Tribunal awarded a lump sum compensation of Rs. 50,000/- without clearly specifying how he came to the conclusion that amount of Rs. 50,000/- would be just and adequate compensation. Besides, some amounts which the Appellants would be entitled to, have been left out by the tribunal and, therefore, the impugned award is liable to be set aside.

Mr. N.N. Saikia submits that there was no negligence, whatsoever on the part of the driver of the vehicle. It was a pure and simple accident. Mr. Dewan appearing for the 2nd Respondent also supports the impugned award.

5. Under the Motor Vehicles Act the Tribunal is to award compensation which appears to it just and fair. In England before 1846 spate of accidents took place which led to the enactment of Fatal Accidents Act, 1846, popularly known as Lord Campbells" Act, Under the provisions of the Act such damages may be awarded as proportionate to the injury resulting from such death to the dependants respectively. Various Courts of England observed that the dependant was entitled by clear principle of law to full compensation for the loss of pecuniary benefit due to the death of the deceased in motor accident. This principle has also been followed in other countries. What is recoverable by the dependant must be calculated on the

basis of "restitutio in integrum"; the aim is to restore the dependant to the financial position he or she would have occupied but for the death. Earlier by following the interest method the compensation used to be awarded. As per the said method the annual loss of dependency as on the date of the death was first ascertained and then a sum was determined, the interest on which was granted as compensation towards future loss of dependency. When such sum is awarded, the dependant enjoyed a periodical interest which was equivalent to the loss of dependency. But the lump sum amount which was paid did not extinguish. So, it was a case of over compensation. Various Courts of India did not approve this method. A lump sum method was adopted. As per that method, the annual loss for each of the future years of expected life of the deceased was first ascertained.

The sum is totalled up. While some courts felt that the said entire amount has to be paid as compensation without any deduction for uncertainties and accelerated payment, other courts felt that a deduction had to be made in regard to the two factors referred to. However, this method also did not find favour in the later divisions. The Supreme Court in [Municipal Corporation of Delhi Vs. Subhagwanti and Others](#), adopted the traditional multiplier system in granting compensation. In such system the annual value of the dependency at the time of the death of the deceased is multiplied by a multiplier depending upon the age of the deceased and various other factors.

6. Whatever is the method that has to be adopted for assessing just or full compensation payable to the dependants of the deceased in motor accident cases, it is realised that such assessment is difficult and complicated. But at the same time the approach has to be made upon logical basis. Generally there is not much difficulty in calculating the annual figure of the dependency as on the death of the deceased, it is ascertained by deducting the amount that had to be spent for the personal expenses and expenses for his food, clothing, etc. from his annual income, but difficulty arises in choosing the multiplier. The maximum that is adopted by the Supreme Court is 20. But the various guidelines for choosing such a multiplier are not discernible. In some cases the multiplier of 15 is taken and in some cases of 20.

7. Then again a question arises in some cases a person may, out of love and affection to the child and wife, contribute more amount to his dependents. Taking the reasonable view it is to be seen whether the amount awarded is sufficient or not. As per the claim petition, at the time of death said N.W. (sic) was 40 years old. He was a chargeman of Gauhati Refinery. His monthly income was Rs. 976.45. His maximum income in the said post would have been Rs. 1200/- per month. However, he had a chance of promotion etc. The Appellant as P.W. 3 stated in her evidence that her husband left behind her and her two children. At the time of giving evidence her elder son was 18 years old and younger 11 year old. She had no source of income other than her husband's salary. She claimed Rs. 1,20,000/- as compensation for the death of her husband. Contrary has not been proved by the

Respondents. Even without taking into consideration of the expected promotion, the deceased would have atleast earned Rs. 1000/- per month average in view of his maximum pay of Rs. 1200/-. In view of the above a multiplier of 18 should be applied. Since the deceased had 6 members of his family, keeping in view all the facts and circumstances of the case the deceased might have been spending 1/3rd of his income upon himself and would have contributed 2/3rd of income towards family. His monthly dependency thus comes to Rs. 666/- i.e. annual dependency would have been Rs. 8000/- When the same is multiplied by 18 it comes to Rs. 1,44,000/-. As at the time of deposition the claimant herself stated that her son had already attained the majority and also in view of her own earning. I reduce the amount of Rs. 35,000/- from the said amount and thus the claimant would be entitled to a total amount of Rs, 1,09,000/-.

I, therefore, allow the appeal raising the compensation from Rs. 50,000/- to Rs. 1,09,000/- with an interest @ 6% per annum.

8. The Insurance company shall pay Rs. 50,000/- with interest thereon and the balance amount will be paid by the owner.

9. I have gone through the cross-objection but I do not find any ground to allow the cross-objection. Accordingly it is dismissed.