Oriental Insurance Co. Ltd. Vs Gunamoni Bora and Others

Court: Gauhati High Court

Date of Decision: June 3, 2008

Acts Referred: Motor Vehicles Act, 1988 â€" Section 166, 173

Citation: (2009) 5 GLR 282 : (2008) 3 GLT 733

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Judgement

I.A. Ansari, J.
This is an appeal preferred u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") against the

award, dated 31.8.2005, passed by the Motor Accident Claim Tribunal, Nagaon, in MAC Case No. 210 of 2003, u/s 166 of the MV Act,

whereby the learned Claims Tribunal has determined a sum of Rs. 8,75,000/-, as compensation, payable to the widow, sons and daughters of

deceased Budheswar Bora, who had died in a motor vehicular accident, on 12.8.2002, as a result of negligent driving of the offending vehicle

bearing registration No. BR-19/J-8133, and the learned Tribunal has accordingly directed the insurer to pay the said sum of Rs. 8,75,000/- with

interest @ 9% per annum from the date of filing of the claim application until realization of the entire amount, the whole amount of compensation

being payable within a period of sixty days with cost of Rs. 1,000/ -. Aggrieved by the award, the insurer has impugned the same in the present

appeal.

2. I have heard Mr. S. Dutta, learned Counsel for the insurer-appellant, and Mr. J. Borah, learned Counsel, appearing on behalf of the claimants-

respondent Nos. 1 to 7.

3. What may be pointed out, at the very outset, is that the finding of the learned Tribunal that the claimants are entitled to receive compensation, for

the death of Budheswar Bora, is not in dispute in this appeal. It is also not in dispute that, as insurer of the offending vehicle, the present appellant is

liable to pay compensation to the claimants-respondents. What is, however, in dispute is the quantum of compensation payable to the claimants. In

this regard, it has been pointed out by Mr. Dutta, learned Counsel for the insurer-appellant, that the said deceased was a teacher in a higher

secondary school and his date of superannuation being 31.3.2005, it is clear that had the said deceased remained alive, he would have served for

barely a further period 2 years and 7 months. In such circumstances, points out Mr. Dutta, the learned Tribunal could not have treated 2/3rd of the

pay and allowances, which the said deceased was drawing at the time of his death, as the amount, which would have been receivable by the

claimants, had the said deceased remained alive. Mr. Dutta further points out that in a case of this nature, when the said deceased had merely two

years and seven months to retire, his last pay and allowances ought not to have been made the sole basis for determination of compensation. In

support of his submission, Mr. Dutta places, reliance on the case of New India Assurance Co. Ltd. v. Smt. Shanta Lakshmi reported in 2005 (3)

TAC 647. The submission, so made on behalf of the insurer-appellants, could not be substantially controverted on behalf of the claimants-

respondents. It is in this backdrop that the present appeal deserves to be decided.

4. While considering the present appeal, what needs to be borne in mind is that when the multiplier applicable, in a given case, is higher than the

number of years of service, which the deceased could have put in, before his superannuation, the contribution to the family, or loss of dependency

of the family, cannot be assessed entirely on the basis of the last salary income of the deceased. When a person"s age of superannuation is 59

years and he dies, in a motor vehicular accident, at the age of 57 years, leaving behind his widow and children, the loss of dependency has to be

calculated in a manner, which would be quite different from the manner of making assessment of loss of dependency in the case of a person, who

may have died, at the age of 40 years, with about 25 years of service still left. In a case of present nature, when a person dies at the age of 57

years, whose age of superannuation is 59 years, his financial contribution to the family could not have been the same after the age of 59 years. It is

in this light that the decision, in Smt. Shanta Lakshmi (supra), needs to be considered.

5. There is no dispute that in the present case, the salary income of the said deceased was Rs. 13,563/- per month and if 1/3rd of this amount is

deducted as the monthly personal expenses of the said deceased, the amount of salary income, available to the claimants (had the said deceased

remained alive), would have been Rs. 9,042/- per month. That., the loss of income suffered, at the time of death of the said deceased, by the

claimants was Rs. 9,042/- every month. What is, now, important to bear in mind is that after 2 years 7 months, when the said deceased would

have retired, the income of the said deceased could not have remained Rs. 13,563/- per month, for, what would have remained available to him is

the pension amount. There is no dispute that in a case of present nature, the pension amount, available to the said deceased, would have been, at

best, Rs. 4,520/- per month. There is also no dispute that if a person dies at the age of about 57 years, 8 shall be the appropriate multiplier. Thus,

while calculating the loss of dependency of the present claimants, the income of the said deceased ought to have been divided into two parts, the

first part being his salary income till the date of his superannuation and the second part, being his pension amount, for the remaining period of the

appropriate multiplier. Before superannuation of such a person, the loss of dependency, ever)'' month, would have been at the rate of Rs. 9,042/-

and, after superannuation, the loss of dependency would have been reduced to 2/ 3rd of the pension amount of Rs. 4,520/-, i.e., a sum of Rs.

3,014/-.

6. In the present case, since the appropriate multiplier is 8, the loss of dependency will have to be calculated with reference to the salary income

for a period of 2 years 7 months and the pension income for the remaining period of 5 years 5 months so that the multiplier of 8 is exhausted.

7. What surfaces from the above discussion is that had the said deceased remained alive, the claimants would have been receiving Rs. 9,042/-, per

month, for a period of 2 and 7 months. Thus, the total amount, which would have been receivable by the claimants, had the said deceased

remained alive, would have been not more than Rs. 2,80,302/-. For the remaining period of 5 years 5 months, the loss of dependency has to be

calculated on the basis of loss of pension income, which amounts to a sum of Rs. 3,014/- per month and it is this amount of Rs. 3,014/- per month,

which needs to be multiplied by a period of 5 years 5 months and, when so multiplied, the compensation, for the period of 5 years and 5 months,

comes to a sum of Rs. 1, 95,910/-. Thus, the total sum payable, as pecuniary loss or the loss of dependency of the claimants, works out to a sum

of Rs. 1,95,910/-. To this amount, needs to be added a sum of Rs. 10,000/- as loss of consortium and another sum of Rs. 5,000/- as funeral

expenses. Hence, the total sum, payable, as compensation, to the claimants-respondents, would have been, at best, Rs. 2,10,910/-.

8. Because of what have discussed and pointed out above, the claimants-respondents must be held entitled to receive (Rs. 2,10,910/ - + Rs.

2,80,302/-) Rs. 4,91,212/- as compensation and this amount shall be paid to them with interest @ 9% per annum from the date of making the

claim application until realization of the entire compensation. While calculating the interest, which may have accrued, on the awarded amount, it is

the duty of the learned Tribunal to take into account such sum(s) of money, which may have been paid to the claimants or may have been

deposited with the learned Tribunal or with this Court, as the sum payable to the claimants, either before or during the pendency of the claim case

or this appeal. The insurer-appellant is hereby directed to make payment of the said sum of Rs. 4,91,212/-, in the manner as directed hereinbefore

within a period of two months from today.

9. Before parting with this petition, it may be pointed out that the insurer-appellant has already paid to the claimants 50% of the amount, which

stood awarded by the learned Tribunal. This aspect shall be borne in mind by the learned Tribunal, while determining the amount, now, payable to

the claimants-respondents. The quantum of the amount, which was awarded as compensation, shall stand modified in terms of the directions given

hereinabove.

10. With the above observations and directions, this appeal shall stand disposed of.

Send back the LCR.