

(2011) 10 PAT CK 0047

Patna High Court

Case No: Miscellaneous Appeal No. 40 of 2010

The Branch Manager, New India
Assurance Company Ltd. Branch
Office, Bhagalpur and The
Divisional Manager, New India
Assurance Company Ltd. Red
Cross, Bhawan, North Gandhi
Maidan, Patna

APPELLANT

Vs

Shobha Kumari and Others

RESPONDENT

Date of Decision: Oct. 14, 2011

Final Decision: Allowed

Judgement

Rakesh Kumar, J.

The present appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") has been preferred against the judgment dated 18.09.2009 and award dated 12.11.2009 passed by the learned 2nd Addl.District Judge-cum- Motor Accident Claim Tribunal, Bhagalpur(hereinafter referred to as the "Claims Tribunal") in M.V. Claim Case No. 94 of 1998. By the judgment and award, the Claims Tribunal has allowed the claim petition and directed the Appellants/Insurer of the offending vehicle to pay compensation amount to the tune of Rs. 24, 09,500/- with interest @ 9 % per annum from the date of filing of the claim case till the date of realization of the total amount after deducting Rs. 50, 000/-, which has already been received by the claimants as interim compensation.

2. Short fact of the case is that on 04.08.1998, the husband of Respondent No. 1, mother of Respondent Nos. 2 to 5 and son of Respondent No. 6 was going to join his duty from his house, situated at village Nasrathkhani, Police Station-Nath Nagar, Bhagalpur by a Tata Maxi having Registration No. BR-10P-8122 along with other co-passengers. By the said vehicle, the husband of Respondent No. 1, namely, Sugrib Mandal was going to Bhagalpur Railway Station for his onwards journey. Sugrib Mandal was at the relevant time posted as Field Officer in Munger Gramin

Kshetriya Bank, Allouli Branch in the district of Khagaria. While Tata Maxi carrying passengers including Sugrib Mandal was moving towards Bhagalpur Railway Station and reached near the gate of T.N.B. College, Bhagalpur, due to rash and negligent driving of the driver, the vehicle in question turned turtle and in the said accident, three passengers including Sugrib Mandal died and several passengers received serious injuries. After the accident, on the same day at Jawahar Lal Nehru Medical College and Hoapital, Bhagalpur on the basis of fardbeyan, an F.I.R. vide Kotwali P.S. Case No. 354 of 1998 was registered for the offence under Sections 279, 337, 338 and 304A of the Indian Penal Code against the driver of the offending vehicle. On the dead body of the deceased, postmortem examination was conducted and the doctor opined that the death had occurred due to vehicular accident. Subsequently, a claim petition was filed, which was registered as Claim Case No. 94 of 1998. The claimants had claimed total compensation amount to the tune of Rs. 26, 03,514.20. At the time of filing of claim petition, the father of the deceased, namely, Bhojal Mandal was also arrayed as claimant. However, before deciding the claim case, he died and, as such, his name was expunged from the record of the case, but before his death, father of the deceased was already examined as Claimant Witness. Before the Claims Tribunal, the claimants examined altogether eight witnesses and number of documents were got exhibited. F.I.R., Postmortem Examination Report of the deceased Sugrib Mandal, photo copy of the Insurance Policy of the offending vehicle, original PAN Card of the deceased, salary statement of the deceased Sugrib Mandal attested by the Branch Manager of Munger Gramin Kshetriya Bank, Allouli Branch under Khagaria district and photo copy of inquest report in respect of deceased Sugrib Mandal were got exhibited. The witnesses examined before the Claims Tribunal categorically supported the claim case. Before the Claims Tribunal, the owner and driver of the offending vehicle appeared and filed a joint written statement. Similarly, both the Appellants/Insurer of the offending vehicle filed written statement. However, the Appellants/Insurer of the offending vehicle did not adduce any oral evidence. After hearing the parties and considering the evidences on record, the learned claims tribunal by the impugned judgment allowed the claim petition and directed the Appellants to pay compensation amount as indicated above.

3. At the time of hearing, Sri Ashok Priyadarshi, Learned Counsel for the Appellants had confined his argument to the extent that the claims tribunal had grossly erred in taking into account gross salary of the deceased instead of taking net salary for the purposes of calculating compensation amount. Sri Priyadarshi, Learned Counsel for the Appellants has further questioned the impugned judgment on the ground that future prospect has been incorrectly considered and decided by the Claims Tribunal. It was argued that while considering the future prospects, the Claims Tribunal was required to take only 50 % addition to the annual income of the deceased on the date of accident. Since the appeal has been confined only to the extent of compensation amount, the Court is not delving into the detail facts of the

case. It is not in dispute that the offending vehicle was insured by the Appellants and it was covered by the Insurance Policy. It is further evident that before the Claims Tribunal, the owner and driver of the offending vehicle had also brought on record photo copy of the driving licence and in absence of any contrary material, the Claims Tribunal had rightly proceeded with the case. In sum and substance, before this Court, the Appellants have questioned the compensation amount and, as such, this Court has proceeded to examine the impugned judgment as to whether the income of the deceased was correctly taken into account by the Claims Tribunal or not and also as to whether the Claims Tribunal had correctly given addition of future prospects in favour of the claimants.

4. Sri Ashok Priyadarshi, Learned Counsel for the Appellants in support of his argument that while calculating the compensation amount only net salary was to be taken into account has heavily relied on a judgment of the Apex Court reported in [The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others,](#) He has specifically referred to paragraph Nos. 9 and 11 of the said Judgment, which are as follows:

9. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus " except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." Lord Wright in the Davies's case (*supra*) said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever sources comes to him by reason of the death." These words of Lord Wright were adopted as the principle applicable also under the India Act in [Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,](#) where this Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimant of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

11. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase.

5. Learned Counsel for the Appellants has drawn my attention to Ext. 5, which is the statement of salary of the deceased issued by the Branch Manager, Munger Gramin

Kshetriya Bank on 28.8.1998. While referring to Ext. 5, it has been argued that after all the deduction, net salary of the deceased was Rs. 9, 297.80. It was submitted that in stead of considering the net income, the Claims Tribunal has taken gross salary of the deceased, which was Rs. 10,672.80. It was submitted that in view of Ext. 5, the net salary i.e. Rs. 9, 297.80 was to be taken into account while calculating the compensation. However, the learned Claims Tribunal has incorrectly accepted the gross salary of the deceased. According to the Learned Counsel for the Appellants, in view of K.I. Bindu's case (supra), the compensation amount is required to be reduced.

6. Learned Counsel for the Appellants has further contended that the learned Claims Tribunal has incorrectly doubled the gross salary of the deceased and has incorrectly come to the conclusion that taking into account the future prospects of the deceased, his salary has been taken into account as Rs. 20, 000/- per month and, accordingly, calculation has been incorrectly done by the Claims Tribunal. According to the Learned Counsel for the Appellants, keeping in view the age of the deceased at the time of the accident i.e. 41 years and future prospects of the deceased, 50 % of his monthly salary was to be added as additional future prospects in terms of law laid down by the Apex Court in a case reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Sri Priyadarshi, Learned Counsel for the Appellants has heavily relied on the observation of the Apex Court. In paragraph-11 of the said Judgment, he has highlighted that the Supreme Court has held that:

In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 % of actual salary to the actual income of the deceased towards future prospects.

7. It was emphatically argued by the Learned Counsel for the Appellants that without any rhyme and reason, the learned Claims Tribunal has doubled the earning of the deceased and accepting Rs. 10, 672.80 as monthly income, the Claims Tribunal has doubled the same as Rs. 20, 000/- per month and thereafter the tribunal has calculated the income, which is contrary to the law laid down by the Apex Court. Accordingly, it has been prayed that the impugned Judgment and award may be modified taking into account the net income of the deceased and giving only 50 % addition to the monthly income instead of 100%, which has been granted by the Claims Tribunal.

8. Sri Manohar Prasad Singh, Learned Counsel appearing on behalf of Respondent Nos. 1 to 6/ Claimants has defended the judgment and award and it was argued that the Claimants had proved its case on the basis of oral as well as documentary evidence. He has further argued that the statement of salary of the deceased, which has been marked as Ext. 5 makes it clear that the income of the deceased was Rs. 10, 672.80, the net amount, which was credited to the account of the deceased, was Rs. 9.297.80, which has come after deducting certain advances. According to the Learned Counsel for the Respondent Nos. 1 to 6, even those deducted amount

should be considered as net salary and the Claims Tribunal has rightly taken into account the gross salary of the deceased, which was Rs. 10,672.80 per month. It has also been contended that there is no error in the impugned order.

9. After going through the materials on record and also law laid down by the Apex Court, as indicated in K.I. Bindu's case (supra), the Court is of the opinion that the net income /net salary of the deceased was to be taken into account for computation of the compensation amount and not the gross salary. The net salary of the deceased was Rs. 9, 297.80 and, as such, the Claims Tribunal has committed error in taking into account the gross salary of the deceased in stead of net salary. Similarly, while granting addition to the monthly income as future prospect in view of Sarla Verma's case (supra) only 50 % addition can be granted and, as such, the Claims Tribunal has again committed mistake in granting 100% addition for future prospects and, as such, the impugned judgment and award requires modification up to that extent. Accordingly, the impugned judgment is modified and taking into account the net monthly income of the deceased i.e. Rs. 9,297.80 per month, it would be appropriate to round it off as Rs. 9,300/- per month and if on this amount future prospects of 50% is added, the same comes to Rs. 13,950/- per month, which comes Rs. 1,67,400/- per year. From the annual income, if 1/3rd is excluded, it comes to Rs. 1,11,600/-. Since at the time of death, the deceased was 41 years old, multiplier of 15 will be taken into account in the present case and, as such, total compensation amount comes to Rs. 16,74,000/-. Besides on the aforesaid compensation amount, the claimants are entitled to get Rs. 5000/- as loss of consortium. Rs. 2500/- as loss of estate and Rs. 2000/- as funeral expenses, which has already been directed by the Claims Tribunal to be paid by the Appellants. So, the total compensation amount after addition of aforesaid amount comes to Rs. 16,83,500/-. Rs. 50,000/-, which was already received by the claimants as interim compensation and, as such, Rs. 50,000/- is to be deducted from the aforesaid compensation amount and, as such, the claimants are entitled to get total compensation amount of Rs. 16,33,500/- along with interest @ 9 % per annum from the date of filing of the claim case till the date of realization of the said amount as directed by the Claims Tribunal.

10. Accordingly, the appeal stands partly allowed. The Appellants are directed to pay the aforesaid amount along with interest, as indicated above, within a period of two months from the date of receipt/production of a copy of this order. The Appellants are entitled to get back the statutory amount deposited at the time of filing of the appeal.