(1979) 05 CAL CK 0001

Calcutta High Court

Case No: A.O.O. No. 145 of 1974

Sambbupada and Another		APPELLANT
	Vs	
Sobhrani Sen Sharma alias Sen Gupta and Others		RESPONDENT

Date of Decision: May 3, 1979

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A, 95(2)

Citation: (1980) ACJ 180

Hon'ble Judges: Ram Krishna Sharma, J; Murari Mohan Dutt, J

Bench: Division Bench

Advocate: Biswajit Choudhury, for the Appellant; Joya Bose, for the Respondent

Final Decision: Dismissed

Judgement

Murari Mohan Dutt, J.
This appeal is at the instance of the owner and the insurer of the vehicle being a private bus No. WBS 2739 and it is directed against Order No. 31 dated May 31, 1973 of the Motor Accidents Claims Tribunal, Calcutta.

The Respondents filed an application under-Section 110-A of the Motor Vehicles Act, 1939 praying for payment of compensation for loss suffered by them for the death of one Bejoy Gopal Sen Sharma in a bus accident. The case of the Respondents was that the deceased who was the sole earning member of the family and was aged about 46 was an employee of the Gillanders Arbuthnot & Co. He was drawing a salary of Rs. 887.75 per month at the time of the accident. He paid a sum of Rs. 507/- per year as income tax. The accident had happened on April 22, 1970 at about 6 p.m. At that time, the deceased was proceeding in front of the Lalbazar Police Headquarters from West to East by the edge of the northern footpath. The offending vehicle in question, that is, the said bus WBS 2739, came from the western side at a high speed, got upon the footpath and knocked the deceased down from

behind resulting in his death. The Respondents contended that both the Appellants were liable for damages to the tune of 85,000/- for the rash and negligent act of the driver of the offending vehicle.

The Appellants entered appearance in the proceeding and contesting the same by filing separate written statements. Their defence was that the application was not maintainable. They denied that the accident had taken place due to the rash and negligent act of the driver. It was their case that the accident had taken place due to the negligence of the deceased as he fell down while trying to board the running bus. It was also contended by them that the claim was excessive. The Tribunal came to the finding that the application was maintainable and it was not barred by limitation. It was also held by the Tribunal that the driver was guilty of rash and negligent driving of the bus as a result of which the accident had happened. The Tribunal found that the deceased was an employee of the Gillanders Arbuthnot & Co. and he was drawing a remuneration of Rs 887 75 including the basic salary, dearness allowance, overtime allowance and bonus. A sum of Rs. 250.75 was deducted from the said sum of Rs. 887.75 on account of personal expenses, food and tiffin and travelling expenses of the deceased. It was found that the deceased was to retire at the age of 59 years and he had still 12 years of service The Tribunal multiplied the said sum of Rs. 637/- by 12 so as to get the annual income of the deceased which worked out to Rs. 7,644/-. He has also added thereto the bonus of Rs. 600/- and having regard to the increase in remuneration he came to the finding that the sum of Rs. 8,344/- was the total annual income of the deceased. Thereafter a sum of Rs. 510/- was deducted from the said total income on account of income tax, and net annual income was calculated to be Rs. 7,734/-. By multiplying the said sum by the number of years the deceased was likely to be in service, it came to Rs. 92,808/-. Twenty percent was deducted from that amount for acidulated lump sum payment and it came to Rs. 72,448/-. Further the deduction of a sum of Rs. 2,143/- that was received by the widow of the deceased from the company in respect of his salary, was made and it worked out to Rs. 72,105/-. The Tribunal held that the said sum was the just and fair compensation and the Appellants were liable to pay the same. It was held by the Tribunal that the liability of the insurer was 75,000/- and it was directed that the entire amount of compensation should be realised from the insurer. An award was made by the Tribunal accordingly. Hence this appeal.

2. Mr. Choudhury learned Advocate appearing on behalf of the Appellants has urged that in calculating the compensation the Tribunal should have excluded the amount of gratuity, house rent allowance and provident fund that was payable to the deceased. In support of this contention, he was placed reliance on a decision of the Supreme Court in Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . It has been observed by the Supreme Court that the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary beneath and on the other any pecuniary advantage which from whatever source comes to them by reason of the

death, that is, the balance of loss and gain to a dependent by the death must be ascertained. In the instant case, the Tribunal has not taken into consideration the gratuity, house rent allowance and provident fund money which would have been payable to the deceased if he had been alive and served the full term of service. The Tribunal has deducted the sum of rupees 2143/- that was received by the widow of the deceased from the company. The Tribunal has not included within the amount of compensation, the full amount of bonus, gratuity, house rent and provident fund money which the deceased would have earned if he had been alive. In the circumstances in our view, the question of deduction under those heads does not at all arise. The decision of the Punjab High Court in Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others, does not support the contention of the learned Advocate for the Appellants In that case it has been held that the Plaintiffs are not in law, debarred from getting the pecuniary benefit of the provident fund that would be payable in April 1972, the date on which the deceased would have died naturally. It is apparent that by the said observation it has been laid down that the heirs of the deceased would be entitled to claim compensation for the amount that would have been payable to the deceased on account of the provident fund.

3. In the circumstances, we do not think that there is any substance in the contention made on behalf of the Appellant that the provident fund money that would have been payable to the deceased should have been deducted from the amount of compensation. For the same reason, we overrule the contention made on behalf of the Appellants that the amount that would have been paid to the heirs of the deceased under the Life Insurance Policy of the deceased should also be deducted. These points were not taken before the Tribunal and we do not think that the Appellants are entitled to argue these points before us which also require investigation of facts.

4. It is next contended on behalf of the Appellants that after the attainment of the majority by the sons of the deceased they were not entitled to any compensation and the Tribunal should have computed the compensation accordingly. It is argued that after a legal representative of the deceased attains a particular age, say, the age of 24 years, he will be debarred from receiving the benefit of the compensation payable arising out of the death of the deceased, and that the compensation should be computed in that limited manner. We have not been able to appreciate this contention made on behalf of the Appellants. It may be that under certain circumstances the compensation should be calculated in the manner as suggested by the learned Advocate appearing on behalf of the Appellants, but in the instant case we do not see why the sons of the deceased who were minors on the date of the institution of the proceeding and attained majority during the pendency thereof would be debarred from receiving the compensation or why the compensation should be calculated in that way. This contention is, accordingly, rejected. The policy of insurance was issued on September 9, 1969 and it was valid upto September 8, 1970. The liability of the insurer u/s 95(2)(b)(ii)(2) of the Motor Vehicles Act was only

Rs. 20,000/-. During that period while the policy was in force, Section 95(2) was amended and liability of the insurer was raised from Rs. 20,000/- to Rs. 75,000/-. The amendment had come into force with effect from March 2, 1970. It is contended that as under the contract between the insurer and the owner of the vehicle the policy covered third party risks to the extent of Rs. 20,000/-, the insurer has no liability in excess of the said amount, for the amendment was not made with retrospective effect. We are unable to accept this contention. The liability of the insurer u/s 95(2) is the statutory liability. Under the policy in question the limit of liability of the insurer in respect of any one accident is such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. In our view, the liability u/s 95(2) is a statutory liability and as on the date of the accident, the amendment had already been made enhancing the liability of the insurer from Rs. 20,000/- to Rs. 75,000/-, the insurer will be liable to pay compensation to the extent of the maximum amount fixed by the statute as amended. This contention is therefore, rejected.

5. Lastly, it is contended that the accident having taken place not in the usual route of the bus in question, that is route No. 33C but in the diverted route, the insurer is not liable to pay any compensation. This contention is also without substance. It is true that the accident had taken place not in the usual route but in a diverted route. It will not be unreasonable to presume that the diversion was made by the police for some reason or other. In our view, when the diversion is made by the police, the diverted route should be regarded as a part of the usual route for the time being. This point also does not appear to have been argued before the Tribunal below. The driver could have been examined by the Appellants to show that the diversion was not made by the police, but the driver was proceeding through the diverted route out on his own. In the circumstances, we do not think that there is any point in the said contention. The said contention is, accordingly, rejected.

6. Before we part with this case, we are of the view that the Tribunal was not justified in awarding interest on the amount of compensation from the date of the application till realisation. In our view, justice would be met sufficiently if we direct that the amount of compensation would bear interest at the rate of 6 per cent per annum from the date of the award of the Tribunal till realisation. No other point has been argued in this appeal.

7. For the reasons aforesaid, this appeal is dismissed subject to this that the amount of compensation will bear interest at the rate of 6 per cent per annum from the date of the award till realisation. In view of the facts and circumstances, there will be no order as to costs.