United India Assurance Company Limited Vs Subhomoy Nag and Another
 Subhomoy Nag and Another Vs United India Assurance Company Limited

Court: Calcutta High Court

Date of Decision: Aug. 8, 2008

Acts Referred: Constitution of India, 1950 â€" Article 141
Motor Vehicles Act, 1988 â€" Section 163A, 166

Citation: (2008) 4 CHN 452

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Pratik Prakash Banerjee and Rajesh Singh, for the Appellant; Subrata Talukdar, Santosh Kumar Das, Arundhuti Das and Sucharita Paul, for the Respondent

Judgement

Bhaskar Bhattacharya, J.
These two appeals were heard analogously as those are filed against a common award dated 21st May, 2007

passed by the Additional District Judge, Eleventh Court, Alipore, and the Motor Accident Claims Tribunal, South 24-Parganas, in M.A.C. Case

No. 251 of 2002 thereby disposing of an application u/s 166 of the Motor Vehicles Act by directing the Insurance Company to pay a sum of Rs.

30,87,500/-towards the compensation along with interest at the rate of 6 percent per annum on the awarded sum from the date of filing of the

application until the actual payment was made.

2. Being dissatisfied, both the claimants and the Insurance Company have preferred these two appeals.

3. According to the claimant, he was injured in an accident on 5th September, 2000 at about 10 a.m. when the driver of the offending Lorry

bearing No. WMH-5070 drove the same in a rash and negligent manner and dashed the victimised stationary car of which the claimant was a

passenger. Due to such accident, according to the claimant, he was seriously injured and steel plates had been set on his left hand, as a result, he

was unable to perform M.R.I, job which is part of his occupation. The applicant claimed that the driver of the offending Lorry was solely

responsible for the accident.

4. The owner of the vehicle did not contest the proceeding but the United India Assurance Company, the Insurer of the Lorry filed the written

statement thereby denying the material allegations made in the claim-application. It was disputed that the accident occurred due to rash and

negligent driving of the vehicle. The age and the income of the victim had also been denied.

5. As indicated earlier, the learned Tribunal, on consideration of the materials on record, came to the conclusion that it appeared from the Income

Tax return filed on behalf of the claimant that he had an average income of Rs. 8,00,000/- per annum prior to the accident. The Tribunal further

observed that such income was reduced to Rs. 1,18,471/- in the assessment year 2003-2004, to Its.4,58,327/- in the assessment year 2004-

2005 and to Rs. 1,93,494/-in the assessment year 2005-2006; after arriving at the such finding, the Tribunal calculated the average income of the

victim for the next three years as Rs. 2.5 lakh per annum and then proceeded to assess the loss of income after comparing the said average amount

with the amount, the victim used to earn prior to the accident.

6. The Tribunal, therefore, held that loss of income from the materials on record appeared to be Rs. 8,00,000/- - Rs. 2,50,000/- = Rs. 5,50,000/-

. Thereafter, considering the age of the petitioner, the Tribunal applied the multiplier of 15 and the amount of compensation was calculated to bo

35% of Rs. 5,50,000/- x 15 which came to Rs. 28,87,500/-. In addition to the above amount, considering the status of the victim, the Tribunal

was of the view that he was entitled to Rs. 1,00,000/- for pain and suffering and a further sum of Rs. 1,00,000/- for the medical expenses and

thus, the total amount came to Rs. 30,87,500/-.

7. Being dissatisfied, both the claimant and the Insurance Company have preferred these two appeals.

8. Mr. Banerjee, the learned Advocate appearing on behalf of the Insurance Company has attacked the award impugned on the ground that the

total approach of the Tribunal in assessing the amount of compensation was erroneous, inasmuch as, the Second Schedule of the Motor Vehicles

Act did not permit assessment of the amount based on average loss of income. Mr. Banerjee laboriously contended that in arriving at conclusion

that the extent of permanent disablement of the victim reached 35 percent, the learned Tribunal below should not have relied upon the evidence

given by the doctor who appeared on behalf of the claimant after acceptance of his professional fees from the victim. Mr. Banerjee further

contends that the said report is based on various documents, which were not at all marked as exhibits in this proceeding. Mr. Banerjee, therefore,

prays for setting aside the award passed by the Tribunal.

9. Mr. Talukdar, the learned Counsel appearing on behalf of the claimant, however, has prayed for enhancement of the aforesaid amount on the

ground that if the actual income of the victim is taken into consideration, the amount should be further enhanced. Mr. Talukdar submits that the

extent of disability assessed by the doctor who appeared as a witness on behalf of the claimant was quite reasonable and there was no just cause

for disbelieving the opinion given by the said witness as an expert in the field. Mr. Talukdar, therefore, prays for enhancement of the amount based

on the actual income of the victim, namely, Its. 8,00,000/- per annum at the time of accident and not on the basis of Rs. 5,50,000/- as assessed by

the Tribunal below.

10. The first question that arises for determination in these appeals is whether the learned Tribunal below was justified in assessing the

compensation by applying the Second Schedule to the Motor Vehicles Act, 1988 notwithstanding the fact that the application was filed u/s 166 of

the Act.

11. After hearing the learned Counsel for the parties and after going through the provisions contained in Section 166 of the Act, we find that in the

proceedings u/s 166 of the Act, the Tribunal is required to assess the ""just"" compensation for the injury or the death of a person, as the case may

be, involved in an accident where the negligence of the driver of any offending motor vehicle is the cause. While Section 163A of the Act has been

enacted notwithstanding the provision of Section 166 of the Act, its application is limited only to the circumstances mentioned therein and the main

difference between the two provisions is that in a proceeding u/s 163A of the Act, the applicant is not required to prove the negligence of the

driver of the offending vehicle, but in a proceeding u/s 166 of the Act, the proof of negligence of the driver of the vehicle responsible is essential.

12. The other important requirement of Section 163A is that the victim involved in the accident must not have annual income of more than Rupees

forty thousand. See: Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, . In the proceedings u/s 163A of the Act,

the Tribunal is bound by the provisions contained in the Second Schedule of the Act subject to the deviation and the exceptions laid down by the

Supreme Court, which by virtue of the provisions contained in the Article 141 of the Constitution of India, is the law of the land.

13. The Apex Court in some of its decisions pointed out some of the defects in the Second Schedule of the Act and consequently, those provisions

of the Second Schedule should not be applied even in the proceedings u/s 163A of the Act. Similarly, although, the Second Schedule does not

permit taking into consideration the age of the claimant for the purpose of applying the correct multiplier and the same should be determined

according to the age of the victim, in case of death of an unmarried person, the Supreme Court has accepted the position that the multiplier should

be determined according to the age of the claimant notwithstanding the provisions contained in the Second Schedule of the Act. See: U.P. State

Road Transport Corporation and Others Vs. Trilok Chandra and Others, . Such principle has been applied by the Apex Court even in the

proceedings initiated u/s 163A of the Act. See: Ramesh Singh and Anr. v. Satbir Singh and Anr. reported in 2008 AIR SCW 1238 and MG. Dir.,

Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma and Another, .

14. However, the law relating to assessment of the amount of compensation enacted by the legislature intended for a victim having a limited income

of Rupees forty thousand per annum and that too, without proving the negligence of the driver of the offending vehicle, cannot be the same in case

of a victim having unlimited income where the claimant has undertaken the burden of proving the negligence of the driver of the offending vehicle.

Therefore, the Second Schedule of the Motor Vehicles Act, 1988 in terms cannot apply to the proceedings u/s 166 of the Act.

15. However, in a proceeding u/s 166 of the Act, if a claimant fails to prove negligence of the offending vehicle, the Tribunal can convert such

proceeding to one u/s 163A of the Act if the claimant avers and proves that the income of the victim was below Rupees forty thousand.

16. Nonetheless, there is no two opinions that the assessment of compensation by applying the multiplier method is also a recognised way of

calculation of the assessment of just compensation but its application is limited only to the fatal accidents because the said method involves

ascertainment of loss of dependency and capitalizing the same by appropriate multiplier.

17. What is in essence the object of the multiplier method has been summarised by the Apex Court in the case of General Manager, Kerala State

Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, in the following way:

The multiplier represents the number of years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss

of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000/- is invested at 10% annual interest, the interest will take care of the dependency,

perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise

the loss of the annual dependency at Rupees 10,000/- would be 20. Then the multiplier, i.e. the number of years" purchase of 20 will yield the

annual dependency perpetually. Then allowance to scale down the multiplier would have to bo made taking into account the uncertainties of the

future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to

be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This

will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.

18. Therefore, in a proceeding u/s 166 of the Act relating to death of the victim, the Tribunal is entitled to apply the multiplier method in the true

sense of the term as pointed out by the Apex Court above after taking into consideration the rate of the present-days-bank-interest but not the

chart given in the Second Schedule incorporated in the Act in the year 1994.

19. As pointed out by the Apex Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the mode of

assessment of compensation in a non-fatal case should be as follows:

Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as

pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being

calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In

order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of

profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and

physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which

may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation

of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort,

disappointment, frustration and mental stress in life.

20. The said principles have been further clarified by a decision of a Bench consisting of three Judges in the case of Lata Wadhwa and Others Vs.

State of Bihar and Others, , in the following terms:

In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be

taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of

matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or

capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and

suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid head, the claimant is duty bound

to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation.

21. The only instance where the Apex Court has applied multiplier method in case of a non-fatal injury is the one in the case of New India

Assurance Co. Ltd. Vs. Charlie and Another, , where the victim suffered 100% disablement and the Apex Court was of the opinion that ""in case,

where the injured has suffered 100%, the logic applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably

applied."" Moreover, in that case, the annual income of the victim was Rs. 18,000/- as would appear from paragraph 4 of the judgment and as

such, there was no bar of application of the Second Schedule of the Act by treating the application as one u/s 163A of the Act.

22. Therefore, apart from the cases where the injured applicant is successful in bringing his case under the purview of Section 163A of the Act,

there is no scope of application of the Second Schedule of the Act in assessing the compensation of damages for the injury suffered. In the case

before us, the claimant has asserted that his annual income is much higher than Rupees forty thousand and thus, there is no scope of application of

the Second Schedule to the facts of the present case.

23. In a proceeding u/s 166 of the Act, if the negligence of the offending vehicle fully or partially is proved, the Tribunal is required to assess the

damages in proportion to the negligence of the offending vehicle found by the Tribunal. In other words, if the offending vehicle is fully responsible

for the injury or the death, the full compensation should be paid by the owner of the vehicle or the Insurance Company, if insured, depending upon

the terms of the insurance agreement. Similarly, if more than one vehicles are involved, the damages will be divided between the owners or the

insurers of those vehicles in proportion to their respective negligence. If, on the other hand, there is some contributory negligence on the part of the

victim, the damages actually suffered by him would be reduced by that percentage of the contributory negligence.

24. The next question is whether the learned Tribunal below erred in arriving at the figure of compensation in the facts of the present case.

25. After hearing the learned Counsel for the parties and after going through the materials on record, we find that P.W.2, the Income Tax Officer

concerned, appeared to give evidence but he did not make any statement apart from disclosing his name and description. The learned Tribunal

below relied upon the Income Tax Returns filed by the claimant but those were not proved by the P.W.2 nor were those documents marked as

Exhibit. Similarly, the Doctor who issued disability certificate admitted in his evidence that he gave such report on examination of the claimant and

consulting the documents produced to him by the claimant relating to his accident and the treatment.

26. However, the fact, whether those documents really pertained to the treatment of the claimant, has not been proved by bringing competent

witnesses and at the same time, those papers were not marked as Exhibits. The P.W.3 while forming his opinion having relied upon various

documents supplied by the claimant accepting those to be genuine and formed his opinion partly based on those papers, and partly, on his physical

examination, we are unable to rely upon such report. The report, it is needless to mention, is not based solely on the physical examination of the

claimant by the said witness and as such, in the absence of proof of genuineness of those papers, which are also the basis of the report, such report

becomes valueless. Therefore, the income of the claimant at the time of accident and the extent of his disability has not been lawfully proved and

the assessment of the Tribunal below based on the income reflected from the un-exhibited documents and the disability of the claimant indicated in

the report of the P.W.3 is liable to be set aside.

27. However, after taking into consideration the fact that the involvement of the offending vehicle is not in dispute and the fact that the claimant was

injured has been well established, we propose to give an opportunity to the parties to lead further evidence in support of their respective claim. Mr.

Banerjee tried to convince us that the car of the claimant was also responsible to some extent for the accident and we should hold so. Since we

propose to remand the matter before the Tribunal to give opportunity to the parties to lead further evidence, we have decided not to enter into

such question at this stage.

28. The learned Tribunal below after giving opportunity to the parties to lead further evidence will decide the question of damages, in the light of

our observations mentioned above. Since the matter is pending for the last eight years, we direct the Tribunal below to conclude the proceedings

positively within a period of three months from the date of communication of this order. Both the appeals, thus, are disposed of by setting aside the

award impugned and remanding the matter back to the Tribunal below.

29. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

30. I agree.