Vidhyawati Vs A. Guruswamy

F.A. No. 004 of 2003

Court: Calcutta High Court

Date of Decision: July 7, 2004

Acts Referred:
Evidence Act, 1872 â€" Section 45#Motor Vehicles Act, 1988 â€" Section 163A

Citation: (2005) 2 ACC 426 : (2005) ACJ 433 : (2005) 1 CHN 22

Hon'ble Judges: Indira Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: N.N. Nag, for the Appellant; Krishna Rao and Anita Hedge Arul, for the Respondent

Judgement

Bhaskar Bhattacharya, J.
This appeal u/s 173(1) of the Motor Vehicles Act, 1988, (""Act"") is at the instance of the applicants u/s 163A of

the Act and is directed against the award dated 14th July, 2003 passed by the Motor Accident Claimant Tribunal, A & N Islands, Port Blair.

2. By the said award, the Tribunal has allowed the claim of the appellants in part to the extent of Rs. 1, 90,570/-. The Tribunal has awarded the

aforesaid amount only for the injury sustained by the deceased but no amount has been sanctioned for the loss of life.

3. Being dissatisfied, the applicants have come up with the present appeal.

4. The following facts are not in dispute:

On September 3,1997, the predecessor-in-interest of the present appellants was proceeding on foot from Aberdeen Bazaar towards his residence

when a taxi bearing No. AN 6426 dashed against him, as a result, he sustained bleeding injuries including fracture of his right leg. The victim

underwent treatment as an indoor patient in G.B. Pant Hospital for one month. As his condition did not improve, he was referred to N.R.S.

Medical College, Calcutta for better treatment and accordingly he was shifted to Calcutta and was treated as an indoor patient in N.R.S. Medical

College, Calcutta from 14th October, 1997 to 25th October, 1997, when he was discharged on request.

5. He, thereafter, got himself admitted to Sir Sundarlal Hospital, B.H.U., Varanasi on 28th October, 1997. On November 17, 1997, although, he

was discharged from that hospital but he was ""kept in follow up"" as it appears from the case summary of the hospital. However, his condition again

became serious and was again admitted to the said hospital on 2nd January, 1998 and was discharged on 16th January, 1998. He was again

brought to the hospital on 16th January, 1998, and ultimately, he died there on January 29, 1998.

6. At the time of death, the deceased was working as a radio operator in the Police Wireless of A & N Islands Police Force and he used to

receive of a monthly salary of Rs. 8,748/-. He was 45 years of age on the date of accident and the claimants prayed for total compensation of Rs.

9,19,292/-.

7. The application was opposed both by the owner of the vehicle and the Insurance Company disputing the allegations made in the application.

8. At the time of hearing, the claimant examined as many as six witnesses and proved various documents which were marked as Ext. 1 to Ext. 6.

The owner of the vehicle, however, examined Branch Manager of Insurance Company as O.P.W. (1). He proved insurance certificate relating to

the offending taxi. The Insurance Company, on the other hand, examined the Investigating Officer of the concerned criminal case. He proved the

final report submitted by him upon conclusion of the investigation.

9. Ultimately, the learned Tribunal below, on consideration of the materials on record, came to a conclusion that the deceased was really involved

in the accident caused by the vehicle owned by the respondent No. 1. It has been further found that the vehicle was covered by a valid insurance

of the respondent No. 2. However, the Tribunal was of the view that the death occurred, not due to accident, but due to the fact that the victim

was subsequently attacked with pneumonia and as he was a diabetic patient, renal failure was also the cause of the death.

10. The Tribunal, thus, came to the conclusion that the claimants were not entitled to get compensation for the loss of life but should be entitled to

the same only for the injuries which would have effect of partial permanent disablement of 15%. According to the Tribunal, since the victim was

aged between 45 and 50 years, multiplier of 13 should be applicable and in such a case, after taking into consideration his monthly income the total

compensation comes to Rs. 12,70, 464/-. However, the injury having been assessed to be 15%, the Tribunal assessed the amount at Rs. 1, 95,

570/-.

11. Mr. N. N. Nag, the learned Advocate appearing on behalf of the appellant, has strenuously contended before this Court that from the

materials on record the learned Tribunal ought to have come to the conclusion that the accident was also the cause of death. According to Mr.

Nag, the Tribunal below did not take into consideration the unchallenged testimony of the Doctor who treated the victim in the hospital at Varanasi

wherein he categorically stated that injury was the cause of death. Regarding causes mentioned in the death certificate, Mr. Nag contends that in

death certificate only the ultimate cause of death is mentioned and that fact has been explained by the Doctor in cross-examination. According to

Mr. Nag, if the victim was not involved in the accident, his condition would not have deteriorated and he would not be a victim of subsequent

attack of pneumonia. In support of such contention he relies upon a decision of Madras High Court in the case of Govind Singh and Others Vs.

A.S. Kailasam and Another, .

12. Mrs. Anita Hedge Arul, the learned Counsel appearing for the Insurance Company has vehemently opposed the aforesaid contention of Mr.

Nag and has contended that the Tribunal below on consideration of the materials on record rightly arrived at the conclusion that the cause of death

of the victim was not the accident but a subsequent disease viz. pneumonia coupled with renal failure which had nothing to do with the accident.

Mrs. Arul also contends that in the certificate of death, there being no mention of ""fracture"" as the cause of death, the appellants are not entitled to

get compensation for the loss of life of the victim. She, thus, prays for dismissal of the appeal.

13. Mr. Krishna Rao, the learned Advocate appearing on behalf of the owner of the vehicle has supported the award of the Tribunal and has

contended that there being no negligence on the part of the driver of the vehicle, his client should not be saddled with the liability to make payment.

14. Therefore, the only question that arises for determination in this appeal is whether the claimants are entitled to the benefit of compensation for

the loss of life of the victim in the present case.

15. Whether the victim died consequent to the accident is the decisive factor in determining the amount of compensation. If it appears that the

death was the direct or consequential effect of the accident, in such a case, the claimant should be entitled to get compensation for the loss of life,

even if the deceased ultimately died of a different disease. For instance, if a person is seriously injured in an accident and is taken to a hospital

where due to negligence on the part of the hospital authority, such victim is infected with tetanus, and ultimately dies of tetanus, in such a situation,

although the cause of death is not actually the accident but infection of tetanus due to negligence of the hospital, it should be presumed that death

occurred as a consequence of accident. Because if the victim was not involved in accident, there was no occasion for bringing him to hospital and

consequently, he would not have been exposed to tetanus.

16. Therefore, in such a case, although death is not the direct result of an accident but definitely, the outcome of such accident.

17. In the case before us, the petitioner immediately after the accident was treated in a hospital in Port Blair. Since, his condition became serious

he was referred to N.R.S. Medical College, Calcutta. The petitioner was not satisfied with the treatment in N.R.S. Calcutta, as a result, on his

request he was discharged and thereafter he was taken to Varanasi in the hospital at B.H.U. It appears from records that in B.H.U. he was treated

at three different phases but on all occasions the subject-matter of treatment also included the injury which was not cured. Since the victim was a

diabetic patient the injury caused to him had created other complications, as a result, his health became further weak and he could not resist the

attack of pneumonia. After the accident, there is no dispute, the victim could not join his official duties and was continuously under treatment for his

injuries.

18. The minutes of medical science at S.S. Hospital, B.H.U., Varanasi being Ext. 5 show that even on the last occasion when he was admitted on

20th January, 1998, help of Orthopaedic Department was taken for the treatment of the fracture. The said medical report shows that along with

other diseases, the fracture injury was also persisting and it was not cured.

19. In such a situation, the question is whether injury can be described as a cause of death. Such question can be answered effectively by the

Doctors who treated him. In this case P.W. 5, a Professor of Medicine in the Department of Benaras Hindu University has in clear terms indicated

that the injury on the right leg that was sustained by the patient was one of the reasons of his death. In cross-examination, the said Professor has

further stated that the injuries that he found might cause infection and might perpetuate failure of several organs of the body one by one. On the

face of such opinion of the Doctor, no suggestion in cross-examination to the contrary was given to the said witness nor have the respondents

examined any other expert showing that in the present case injury cannot be the cause of death.

20. It further appears from the statement of the said Professor of Medicine that he did not mention in his death certificate that the fracture on the

right leg was one of the reasons of death because, cause of death is always indicated to be the failure of a particular organ at the time of death and

since ""bone"" does not fail, it could not be said that the fracture was the cause of death.

21. As indicated above, in the absence of any medical opinion contrary to the one given by P.W. 5, this Court is left with no other alternative but

to accept his version that injury was one of the causes of death. We find no reason to either ignore or disbelieve the opinion of P.W. 5, the

Professor of Medicine of the University in the absence of any other opinion on the subject. Once the injury arising from the accident is found to be

the primary cause of death, the claimant should be entitled to get compensation for the loss of life of the victim. It is now settled position of law that

if the cause of death is integrally connected with the injury sustained in the accident and is one in the chain of causa causens, the cause of death

must be attributed to the injury suffered in the accident.

22. Therefore, the Tribunal below acted illegally in refusing compensation for the loss of life of the victim.

23. We, thus, set aside the award impugned and hold that the appellants are entitled to get compensation for the loss of life of the deceased. Since,

the deceased was 45 years of age at the time of accident and he used to get a salary of Rs. 8,144/- a month, applying multiplier of 13, the total

amount comes to Rs. 12, 70,464/-. After deducting therefrom l/3"d of the said gross compensation as required under the Second Schedule of the

Act, the net amount comes to Rs. 8,46,976/-. The respondent Insurance Company having already paid Rs. 1,90,570/- as per the award

impugned, is directed to pay the balance amount within two months from date. We also award interest at the rate of 12 per cent per annum from

the date of filing of application till actual payment. The total amount should be paid by two account payee cheques of equal amount, one in the

name of the petitioner No. 1 and the other, in the name of the minor petitioner No. 2 represented by the petitioner No. 1 The money in the name of

the petitioner No. 2 should be kept in a fixed deposit in any nationalized bank up to the period the petitioner No. 2 attains majority. After attaining

majority, he will be entitled to withdraw the amount.

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

Indira Banerjee, J.

25. I agree.