(2007) 08 CAL CK 0017

Calcutta High Court

Case No: F.M.A. No. 514 of 2006 with C.A.N. No. 8085 of 2006

Maina Devi and Others		APPELLANT
	Vs	
Panchu Das and Another		RESPONDENT

Date of Decision: Aug. 21, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A, 166, 171

Citation: (2008) ACJ 2322

Hon'ble Judges: Tapan Mukherjee, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Amit Ranjan Roy, for the Appellant; Rajesh Singh, for the Respondent

Judgement

Alok Kumar Basu, J.

Appellant Maina Devi preferred a claim application before the learned District Judge at Alipore u/s 166 of Motor Vehicles Act, 1988, on account of death of one Awadh Narayan Passy who was a security guard under Calcutta Port Trust, drawing a monthly salary of Rs. 11,453 at the time of his accident. Appellants Maina Devi claimed compensation to the tune of Rs. 12,00,000 with costs and interest.

2. The claim petition was subsequently transferred for disposal to the learned Thirteenth Additional District Judge, Alipore and before the learned Tribunal, Panchu Das, owner of the offending vehicle did not contest the claim application and only New India Assurance Co. Ltd. with whom the offending vehicle was insured, contested the claim application and challenged the claim of the appellants.

3. The learned Tribunal after considering both oral and documentary evidence adduced by the claimants in support of their claim application by its order dated 22.12.2005 awarded a sum of Rs. 5,81,000 as the compensation amount in favour of claimants and on 2.3.2006 the insurance company deposited three accounts payee cheques to pay the entire amount before the learned Tribunal and on 3.3.2006 the present appellants received those cheque amounts.

4. The appellants thereafter preferred this appeal mainly challenging the application of multiplier by the learned Tribunal while computing the compensation amount and also for non-payment of interest as provided in Section 171 of the Motor Vehicles Act and, that apart, the appellants also pointed out some arithmetical mistakes in computing the compensation amount by the Tribunal.

5. Since Panchu Das, the owner of the vehicle did not contest the claim application before the learned Tribunal, on the submission of the learned advocate for the appellants, service of notice of appeal on the said Panchu Das stands dispensed with and so far as service point is concerned, the appeal was found otherwise ready.

6. The appellants subsequently filed C.A.N. No. 8085 of 2006 for expeditious hearing of this appeal and on consent of the learned advocate of both the sides and pursuant to the prayer made out in C.A.N. No. 8085, we have taken up this appeal for disposal and after hearing submissions of the learned advocate for the respective parties, we deliver this judgment to dispose of the appeal.

7. Learned advocate for the appellants submits before us that the learned Tribunal in its judgment and order accepted that the victim was 44 years of age at the time of his accident and death and naturally, in view of the Second Schedule to the Motor Vehicles Act, 1988, the learned Tribunal ought to have applied ''15'' as the multiplier for computing the compensation amount payable to the appellants, but in this case the learned Tribunal without assigning any special reason used ''7'' as the multiplier and by applying ''7'' as the multiplier, the learned Tribunal has acted in total violation of the statutory provision and the appellants have been deprived of their legitimate share of compensation.

8. The learned advocate for the appellants next submits that under the provision of Section 171 of the Motor Vehicles Act, 1988, the appellants are also entitled to get interest to be fixed by Tribunal and such interest is payable from the date of filing of the claim application till the amount is received by the claimants. But, in this case the Tribunal did not pass any order for payment of interest and the Tribunal also did not record any special reason for non-awarding such interest and this is also against the statute and decision of the Apex Court of the land.

9. Learned advocate for the appellants finally submits that there is arithmetical mistake in the calculation of the compensation amount by the learned Tribunal, because the learned Tribunal itself determined the annual income of the appellant as Rs. 1,32,612 but, while calculating the compensation amount the learned Tribunal through oversight took the annual income as Rs. 1,22,112 and this was a bona fide mistake and it should be rectified and the actual compensation even if multiplier of ''7'' is accepted would come to Rs. 6,18,856 and along with this amount another sum of Rs. 11,000 as granted by the Tribunal on account of loss of consortium and the association shall be added and the total amount would come to Rs. 6,29,856.

10. In support of his contention that the learned Tribunal was wrong in using "7" as a multiplier ignoring the formula shown in Second Schedule to the Motor Vehicles Act, 1988, the learned advocate for the appellants has drawn our attention to the decision of the Hon''ble Supreme Court reported in 2000 (6) SC 243 : 2000 (1) TAC 649 (SC) (sic) and submits that the Hon''ble Supreme Court has observed though the multiplier system was formulated for the purpose of Section 163-A of the Act, it was nevertheless a safer guidance for arriving at the amount of compensation than any other method. Learned advocate for the appellants submits that although the Tribunal is not bound to follow strictly the multiplier formula indicated in Second Schedule to the Act, but in case of any deviation the Tribunal must record sound reason for such deviation and in this particular case, the Tribunal quite arbitrarily applied ''7'' as the multiplier which was not proper and fair.

11. The learned advocate appearing for the respondent insurance company, on the other hand, submits before us that while disposing of a claim application u/s 166 of the Motor Vehicles Act, 1988, there is no structured formula to be followed by the Tribunal while computing the compensation amount, but following several decisions of the Hon''ble Supreme Court of India we find that the Hon''ble court observed that as a general rule in the case of computation of compensation the structured formula as provided in the Second Schedule to the Act and which is very much applicable in the case of an application preferred u/s 163-A may be followed as a safer guidance for computation of compensation in case of an application filed u/s 166 of the Motor Vehicles Act.

12. Learned advocate for the insurance company, however, submits with force that the multiplier system introduced in Second Schedule is not mandatory and having regard to the totality of the facts and circumstances, the Tribunal can very well deviate from the formula enunciated in the Second Schedule to the Motor Vehicles Act and the main consideration for the Tribunal to use the multiplier would be the amount of multiplicand. The learned advocate for the insurance company submits that in this particular case after considering the status of the victim and his family, the age of the victim, the future prospects and above all the amount of multiplicand, the Tribunal in its wisdom applied ''7'' as the multiplier and looking at the compensation amount having regard to the facts and circumstances of the case it cannot be said that the compensation amount was neither just nor fair. The learned advocate for the insurance company in support of his contention has referred to the decisions reported in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., ; I (2006) ACC 123 (SC) ; Tamil Nadu State Trans. Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and 2007 (5) Supreme 314.

13. Learned advocate for the insurance company has, however, made no submission on the question of payment of interest and contended that this is a matter for consideration of this Court keeping in mind the decisions of the Apex Court of the land.

14. We have carefully considered submissions of both the learned advocate for the appellants as well as the learned advocate for the respondent insurance company and we find that the points for determination in this appeal are indeed very limited and the points are confined to three basic questions, one whether there has been any arithmetical mistake while calculating the compensation amount with multiplier ''7'' as used by the learned Tribunal, whether the learned Tribunal was justified in using ''7'' as a multiplier having regard to the age of the victim and the Second Schedule to the Motor Vehicles Act and finally, whether the claimants are entitled to get interest from the date of filing of the claim application till the amount is received by them. So far as the question of multiplier is concerned after going through the different decisions of the Hon''ble Supreme Court of India regarding use and application of multiplier while calculating compensation in motor accident claim case, we find that although the multiplier system was introduced for just and proper calculation of compensation amount in an application preferred u/s 163A of the Act, the Claims Tribunal should by and large follow the same method while calculating the compensation u/s 166 of the Motor Vehicles Act and the Hon''ble Court through plethora of decisions made it abundantly clear that while multiplier system is a safe guideline for calculating just and fair compensation, but the choice of multiplier shall depend on several factors including the amount of multiplicand.

15. We find from the judgment and order of the learned Tribunal that after considering the income of the victim, his age, his future prospects and the status and requirement of his family, the Tribunal used ''7'' as multiplier and the Tribunal while using this multiplier was also very much aware of the amount of multiplicand.

16. After going through the judgment and order of the learned Tribunal and after hearing submissions of both the sides and keeping in mind the decisions of Hon''ble Apex Court of India, we are of the view that in this particular case the Tribunal made the correct choice regarding multiplier and we do not find any scope to interfere with that choice of multiplier of the Tribunal.

17. Now, coming to the calculation of the compensation amount using ''7'' as the multiplier we find on examination of the judgment and order that there has been bona fide mistake in calculating the compensation amount and the correct compensation amount would be Rs. 6,29,856. As regards the claim of interest we are of the view that the appellants are entitled to get simple interest at the rate of 6 per cent per annum from the date of filing of the application which was 5.4.2004 and the insurance company must pay such interest from 5.4.2004 till 2.3.2006 on the amount of Rs. 5,81,000 and thereafter from 5.4.2004 till the balance amount is paid which would come to Rs. 48,856.

18. Thus, after hearing both the sides we allow this appeal in part. The judgment and order of learned Tribunal is modified to the extent that the appellants shall get a total sum of Rs. 6,29,856, as compensation amount and since the respondent insurance company has paid Rs. 5,81,000, the respondent insurance company shall

deposit the balance Rs. 48,856 together with 6 per cent interest from 5.4.2004 till 2.3.2006 on Rs. 5,81,000 and from 5.4.2004 till the amount is paid on the amount of Rs. 48,856 and the amount shall be paid by the respondent insurance company within two months from this order.

19. There will be no order as to costs.

20. Send the L.C.R. along with copy of this judgment for information and necessary action by the learned Tribunal.

21. Urgent xerox certified copy of this judgment, if applied for, be supplied expeditiously after complying with all the legal formalities.

Tapan Mukherjee, J.

22. I agree.