New India Assurance Co. Ltd. Vs Renuka Laha

Court: Calcutta High Court

Date of Decision: July 11, 2013

Citation: (2014) 3 ACC 677 : (2014) ACJ 944 : (2014) 1 CHN 470

Hon'ble Judges: Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Judgement

Ashim Kumar Banerjee, J.

FACTS:

1. Ajit Kumar Laha, aged about 54 years, was working as a fire operator in Panagarh Fire Service. While he was proceeding on his motor cycle

on Panagarh-Ilam Bazar road on March 11, 2007, he was hit by a Trailer bearing No. NL-01D-3024 near Trilokchandpur bridge. He was

severely injured and succumbed to the injury. Durgapur Sub-divisional Hospital declared him dead, on being brought. The victim left him surviving

his widow, one son and one married daughter. They claimed compensation for Rs. 10 lacs along with interest at the rate of 9% per annum u/s 166

of the Motor Vehicles Act.

EVIDENCE:

The widow Renuka Laha adduced evidence. She proved the employment of the deceased and his unfortunate death in the accident. She claimed,

her husband was getting Rs. 11,499.00 as salary while she was getting pension of Rs. 5,000.00 per month. At the time of adducing evidence, the

mother of the victim had already died. P.W. 2, Shyama Pada Routh claimed to be the eyewitness. According to him, he saw the Trailer coming

with high speed approaching Ham Bazar in a rash and negligent manner and dashed the motor cycle of the victim who died on the spot. He blamed

the driver of the vehicle to be the cause of the accident. In cross-examination, he deposed, he was on the kachha portion of the road while the

motor cycle was on the metal road and crossed him by the time it was hit by the Trailer. He deposed in cross-examination, it was ""head on

collusion"". He knew the victim working as a fire operator. P.W. 3 Asish Kumar Panda came to support his engagement. He was the Divisional

Manager, West Bengal Fire and Emergency Service. He proved the Admit Card of the Higher Secondary Examination of the victim to prove his

date of birth. He deposed, Ajit had drawn salary of Rs. 9,849.00 for the month of February, 2007. He also deposed, the Dearness Allowance

was variable and it was increased from time to time.

AWARD OF THE TRIBUNAL;

2. The Tribunal was satisfied with the evidence on the factum of accident and involvement of the offending vehicle. The Tribunal came to

conclusion, Ajit died due to accident caused by rash and negligent driving of the Trailer.

3. The Tribunal was also satisfied with the date of birth as claimed by the claimants. His age was little less than 55 years on the date of the

accident. The Tribunal applied the multiplier of eight while calculating the compensation. The Tribunal relied on the statement of the Divisional

Manager, victim was drawing Rs. 9,460.00. The Tribunal relied on the same and deducted 1/3rd as his personal expense, calculated the

compensation by awarding additional sum of Rs. 4,500.00 on account of loss of estate and funeral expenses and Rs. 5,000.00 on account of loss

of consortium.

4. The Tribunal apportioned the compensation and directed the Insurance Company of the offending vehicle to pay the compensation.

5. Being aggrieved, the Insurance Company of the offending vehicle preferred the instant appeal.

THIS APPEAL AND THE CROSS-EXAMINATION;

6. The appellant took various pleas in the Memorandum of Appeal, however Mr. Parimal Kumar Pahari, learned counsel appearing for the

Insurance Company mainly raised the issue of unexpired period of service and the choice of multiplier. According to him, the victim was aged

about 55 years old and hardly five years service left to his credit, hence, choice of multiplier of eight would be inappropriate.

7. The claimants filed the cross-examination on the ground, the Tribunal erred in assessing the net salary that would include Provident Fund

contribution and Group Insurance amounting to Rs. 1,540.00 that could not be taken into account. The claimants were also unhappy on the denial

of the Tribunal in awarding interest. The future prospect was also not taken into account.

CONTENTIONS:

8. As referred to above, Mr. Pahari stressed his argument on the issue of choice of multiplier. He relied on a Division Bench decision of this Court

in the case of (2014) 2 ACC 258 and the age-old decision in the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and

Others, . He would contend, the appropriate multiplier would be five taking into account the unexpired period of service.

9. Per contra, Mr. Jayanta Mondal, learned counsel would contend, choice of multiplier could not be dependant upon the unexpired period of

service. Such proposition would not have any support of law. According to him, the Tribunal selected the appropriate multiplier that would not call

for any interference. He would rely upon the following decisions:

1. Smt. Sabita Sarkar & Ors. vs. Oriental Insurance Co. Ltd. & Ors. reported in 2002 I LJ Cal page-396;

2. Vimal Kanwar and Others Vs. Kishore Dan and Others, ;

3. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ;

4. Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, ;

5. U.P. State Road Transport Corporation Vs. Krishna Bala and Others, ;

6. The New India Assurance Co. Ltd. vs. Smritilekha Tewari & Ors. unreported decision of this Court in the case of FMA 814 of 2010;

7. Reshma Kumari and Others Vs. Madan Mohan and Another, ;

OUR VIEW:

NET PAY:

10. Let us first decide the Cross-objection on the fixation of pay. It is now settled proposition, the net pay of a permanent employee should be

taken into account as the gross pay, less the tax deducted at source. The Provident Fund or Group Insurance contribution or any other

reimbursement could not be deducted while assessing the net pay for the purpose of computation of compensation. The Tribunal erred in doing so.

As per the pay slip dated March 23, 2007, the victim was getting the basic pay of Rs. 6,075.00 and taking into account the Dearness Allowance,

House Rent Allowance and other applicable service benefit, he got Rs. 11,499.00 for the month of February 2007, being his last drawn pay. He

was deducted a sum of Rs. 1,650.00 that would include Rs. 1,540.00 as Provident Fund and Group Insurance contribution. Hence, his net pay

should be Rs. 11,389.00 for the purpose of assessment of compensation. The Tribunal erred to the said extent. The accident occurred on March

11, 2007 when he was little less than 55 years old. The Award should be modified accordingly.

CHOICE OF MULTIPLIER:

11. Before we deal with the issue, let us consider the law on the subject as per the precedents cited at the Bar.

Gobald Motor Service Ltd. (supra):

12. The Apex Court followed a passage from Lord Russel of Killowen, the passage is quoted herein:

The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that

any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a

dependant by the death must be ascertained, the position of each dependant being considered separately.

Lord Wright elaborated the theme further thus at p. 611:

The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all

circumstances which maybe legitimately pleaded in diminution of the damages must be considered ...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 source comes to him by reason of the death.

13. The gist of the quotation would suggest, the actual pecuniary loss of an individual could 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 he got out of the happening. The Apex Court suggested

balancing of the two factors, being the advantage and disadvantage, both coming out of the unfortunate accident.

Smt. Sabita Sarkar (supra):

14. The Division Bench of our Court observed, the family pension should not be taken into consideration, so was the unexpired period of service

left, on the choice of multiplier.

U.P. State Road Transport Corporation (supra):

15. The Apex Court herein observed, the choice of multiplier would depend upon the age of the deceased.

Sarla Verma (supra):

16. This decision considered the earlier decisions on various aspects including choice of multiplier and after considering earlier precedents,

suggested a comprehensive schedule of multipliers other than the second schedule appended to the Motor Vehicles Act, 1988.

K.R. Madhusudhan (supra):

17. The Apex Court made a departure from Sarala Verma (supra) by branding the case as an ""exceptional circumstances"". The Tribunal applied

multiplier of eleven in an age group of 51 to 55 years.

Smritilekha Tewari (supra):

18. The victim was a Government employee. Our Division Bench, considering earlier decisions including K.R. Madhusudhan (supra) and Trilak

Chandra (1996 Accident Claims Journals page-831) applied the multiplier of eight ignoring the period of service left.

Vimal Kanwar (supra)

19. In the case of Vimal Kanwar (supra) the Apex Court once again considered all the earlier decisions including Sarla Verma (supra) and

observed, the Tribunal applied lower multiplier considering the family pension and compassionate appointment. The victim was a permanent

employee of the State Government. He died at the age of 28 years plus. Considering such issue the Apex Court gave the benefit of 100%

increment. The Apex Court applied the multiplier of seventeen and awarded appropriate compensation.

Reshma Kumari (supra):

20. In this decision a three-Judge Bench answered principally two queries of two-Judge Bench i) whether the second schedule should be

scrupulously applied in all cases? ii) Whether question of future prospect should be considered applying the other decisions including Sarla Verma

(supra).

21. On a combined reading of all the earlier decisions on the issue, we are convinced, there could not be any strait-jacket formula that could be

applied. Each case would have a distinctive feature that would guide the Court to arrive at a conclusion either on the choice of multiplier or

ultimately awarding a just compensation. Section 166 has given a wide power to the Court to award just compensation. Following the age old

principle, the Court has to balance the advantage and disadvantage and ultimately come to the conclusion as to what would be the appropriate

compensation, having regard to the facts and circumstances in a given case.

22. We are prompted to say so as we find, in 2009 it was thought, Sarla Verma (supra) had given us a guideline that could be conclusive on the

issue. Even then, the Apex Court made a departure in K.R. Madhusudhan (supra) branding it as an exceptional circumstance.

23. Applying the ratio decided and our understanding on the subject, let us proceed to find out as to whether the Tribunal was justified in awarding

appropriate compensation or it would require further interference.

24. The victim was having a permanent Government job, he had five years service left. We are not sure whether the widow got any compassionate

appointment. Had the victim been alive, he would have served the State for another five years. The victim had only two dependents, being the

widow and the only major son. We are not sure as to the means of livelihood of the son. The Tribunal however, directed payment of compensation

to the married daughter as well. We do not wish to make any comment on that score.

25. The Tribunal applied the multiplier of eight and deducted 1/3rd of his income as his personal expense. Age of 60 years in the present age,

considering the average mortality, could not be considered as the end of working life. It is true, victim would have got the pension after 60 years. It

is also true, the widow is now getting family pension. The Tribunal watched the demeanor of the witnesses particularly, the widow, in its wisdom

applied multiplier of eight that could not be said to be absolutely perverse warranting interference by the Court of Appeal. We cannot brush aside

the fact that untimely death of the sole breadwinner would not only cause financial stringency to the family but also have the adverse impact as

we"ll. It is true, the Division Bench in the case of Smt. Namita Mishra (supra) applied the multiplier of nine considering the unexpired period of

service. It is also true, if we apply Sarla Verma (supra), the victim would have no future prospect. We are not oblivion of the fact, the Apex Court

in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, discouraged the attempt to consider advantage

of benefit of Life Insurance Policies that the victim ultimately got. We thus do not wish to interfere with the choice of multiplier, as we find the same

not so perverse to warrant interference.

26. We further make it clear, our reluctance to interfere, must not be construed as a standard formula to be applied. We intend to do so

considering the facts and circumstances involved in this case and we reserve our liberty to do so in a given case.

DIRECTION:

27. The Award is thus modified as follows:-

28. The awarded amount would carry interest at the rate of 6% per annum on and from April 12, 2007 being the date of filing of the claim

application until the date of deposits/payments whichever is earlier.

29. The awarded sum would also carry interest at the same rate on and from April 12, 2007 until payment.

30. The Insurance Company is directed to pay the awarded sum as well as interest to the claimants in the same proportion as directed by the

Tribunal through account payee cheques to the claimants at the recorded address by speed post. Such payment must reach the claimants within

four weeks from the date of communication of this order.

RESULT:

31. The appeal being F.M.A. No. 473 of 2011 fails and is hereby dismissed. C.O.T. No. 56 of 2010 is disposed of accordingly. There would be

however, no order as to costs.

32. The Registry is directed to send down the records at once.

33. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.

Later:

Mr. Pahari submits, the entire awarded sum has already been deposited with the Registrar General. After payment of compensation being made to

the claimants, Insurance Company would be at liberty to withdraw the amount lying with the Registrar General along with accrued interest.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.