

(2013) 07 CAL CK 0028

Calcutta High Court

Case No: F.M.A. No. 230 of 2010 and C.A.N. No. 5278 of 2013

Ratna Mondal (Smt.) and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and  
AnotherRESPONDENT

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**Date of Decision:** July 11, 2013**Citation:** (2014) 1 ACC 255 : (2014) ACJ 1158**Hon'ble Judges:** Mrinal Kanti Choudhuri, J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Advocate:** Krishanu Banik, for the Appellant; Kamal Krishna Das, S.K. Das and Mr. Sayak Majumder, for the Respondent**Final Decision:** Disposed Off

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### Judgement

Ashim Kumar Banerjee, J.

Bikash Mondol aged about thirty six years met with a Motor Accident on 15th February, 2007 under Garhbeta Police Station. He succumbed to the injury on the spot. He died leaving him surviving his widow the Appellant No. 1 and two minor children being the Appellant Nos. 2 and 3 and his aged mother being the Appellant No. 4. He was an employee of the Life Insurance Corporation posted at Garhbeta Branch drawing a salary of Rs. 13, 697.81 on the date of the accident. The appellants claimed compensation for Rs. 16 lacs from the owner and insurer of the of/ending vehicle being the respondent Nos. 1 and 2. The Tribunal examined the Appellant No. 1, the widow of the deceased, one Rafikul Mondal claiming to be an eye witness, and one Samir Kundu an employee of the Life Insurance Corporation who brought the records pertaining to his employment. The widow established her claim for compensation as next to kin of the deceased. She also proved the age with the support of the Admit Card and PAN Card belonging to the deceased. In her cross-examination she deposed, the victim was getting a gross salary of Rs. 4,500 as a group "D" employee. Rafikul proved the accident. According to him, the offending vehicle was being driven in rash and negligent manner. Samir proved the salary.

According to him, the victim was repaying the cooperative loan and the provident fund loan that he had taken during his life time. He was also repaying his Dashera advance that was deducted. The victim was deducted at source a sum of Rs. 1,200 per month on account of income tax and Rs. 100 on account of professional tax. However, "the professional tax" was not appearing in the affidavit of evidence that we presume, looking to the salary certificate. On perusal of the salary certificate exhibited before the Tribunal we find, the victim was getting a gross salary of Rs. 13,697.81. After deducting a sum of Rs. 9,269.81, he was getting Rs. 4,428 however, on a scan of the deductions we find, most of the deductions were reimbursement of the loan that the victim availed. Only admissible deduction which we find relevant for the purpose of assessment of his net salary, would be income tax and professional tax to the extent of Rs. 1,200 and Rs. 110 respectively. If we deduct the said amount of Rs. 1,310 the net salary would be for our present purpose, Rs. 12,387.81.

Award of the Tribunal:

2. The Tribunal accepted the assertion of the accident as well as the gross salary. While calculating compensation, the Tribunal considered the actual net pay that the victim got from Life Insurance Corporation being Rs. 4,428 and not Rs. 12,387.81.

The Tribunal awarded interest on judgment at the rate of 5% per annum. The Tribunal declined to award interest pendente lite without assigning any reason.

The Appeal:

3. Being aggrieved, the claimant filed the instant appeal that we heard on the above mentioned dates. The appellant preferred the instant appeal inter alia on the following grounds:

(i) The Tribunal did not consider the net salary that the victim's family lost due to his death.

(ii) The Tribunal did not consider the future prospect of the victim.

(iii) The Tribunal did not award pendente lite interest and the rate of interest was also low.

Decisions cited:

4. (1) [Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,](#)

(2) [Smt. Mousumi Hansda and Others Vs. Oriental Insurance Co Ltd. and Another,](#)

(3) [Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others,](#)

(4) [The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others,](#)

(5) [Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others,](#)

- (6) [Rama Das and Others Vs. Universal Fibre Glass Products and Another,](#)
- (7) [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#)
- (8) [Vimal Kanwar and Others Vs. Kishore Dan and Others,](#)

#### Contentions:

5. Mr. Krishanu Banik learned Counsel appearing for the appellants would strenuously contend, learned Tribunal did not consider the pay slip in true spirit before awarding compensation. The learned Tribunal also did not assign any reason while declining to award interest pendente lite. On the future prospect Mr. Banik strongly relied on the decision the case of Sarla Verma (supra) and contended, the Tribunal could not have ignored the future prospect that the deceased lost due to his untimely death and the family was deprived of such benefit.

6. Per contra, Mr. K.K. Das would not join issue on the pay certificate and interest. However, on future prospect, Mr. Das would distinguish Sarla Verma (supra), and would strongly rely on the decision of the Apex Court on the issue. In the case of Bhakra Beas Management Board (supra) the Apex Court observed, "whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of accidental death and no other forms of death". According to the Apex Court, the Tribunal should follow the procedure that would lead to assessment of a just compensation and nothing else.

#### Our View on the Calculation and Interest:

7. It is settled principle of law, the net pay for the purpose of assessment of compensation could not take into account the loan that the victim was repaying. The only permissible deduction for the purpose is the tax that the victim would have paid had he been alive that should be, in the instant case, income tax and professional tax. The appeal, in our view must succeed on such issue. Similarly, the Tribunal overlooked Section 171 of the Motor Vehicles Act, 1988 wherein the claimant would be entitled to reasonable interest from the date of the claim application. We feel, the claimant should get interest at the rate of 5% as fixed by the Tribunal from the date of the filing of the claim application and not from the date of judgment as erroneously directed.

#### Our View on the Future Prospect:

8. Accidental compensation is paid under three provisions of the said Act of 1988. Section 140 would foist the liability on the insurer, a fixed amount of compensation of Rs. 50,000 in case of any accidental death irrespective of proof of rash and negligent driving or the fault of the vehicle covered under the policy of insurance.

9. Section 163A would have a structured formula applicable in case of lower income group having an income of Rs. 40,000 or less, per annum. Such structured formula is also readily available as a guideline in case of other mode of compensation. The

above two provisions would allow a special mode that would not any way restrict the scope of the general provision u/s 166 where Tribunal would have wide power to award just compensation to the victim in case of injury and to the victim's family in case of death.

10. The Apex Court times and again cautioned the Tribunal to follow the guidelines that the Apex Court framed through the precedents. One of such guideline would speak about future prospect.

11. If we start from Gobald Motor Service Ltd. (supra), we would find, the old law was in vogue. In case of accidental death Fatal Accidents Act, 1855 would enable the Court to award appropriate compensation. However, the principle would be same as we find from our present law being the Act of 1988. Paragraph 7 quoted a passage from Lord Russell of Killowen. The quotation is extracted supra:

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 dependent by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependent by the death must be ascertained, the position of each dependent being considered separately.

The Apex Court relied on the passage that would suggest, any benefit accruing to a dependent by reason of the relevant death must be taken into account. The actual pecuniary loss of each individual could only be ascertained by balancing, on the one hand, the loss of the future prospect, pecuniary benefits and on the other hand, the advantage that the victim's family got.

12. In the case of Smt. Mousumi Hansda (supra), our Division Bench in paragraph 9 observed, a pecuniary advantage gained by the heirs of the deceased could not be said to be an advantage resulting from the accidental death.

13. In the case of Tamil Nadu State Transport Corporation (supra), the Apex Court considered the fact that the victim's wife got compassionate appointment.

14. In the case of Bijoy Kumar (supra), the Apex Court considered relevant factors to decide on the multiplier. While doing so, the Apex Court also considered the unexpired period of service that the victim was deprived of because of the accidental death.

15. In the case of Smt. Roma Das (supra), our Division Bench followed the earlier decision of the Apex Court, in the case of [Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another](#), and observed, fact that the widow was getting family pension could not be considered for calculation of compensation.

16. The Apex Court in the case of Sarla Verma (supra), considered all earlier decisions on the issue and framed a guideline to be followed for awarding just

compensation. One of the issues that the Tribunal considered was the future prospect. The Apex Court was of the view, whatever compensation the Tribunal would calculate, as a rule of thumb, the family would get additional amount of 50% on account of future prospect in respect of the age group of below 40 years having a permanent job and 30% in case of the higher age group between 40-50 years. However, the victim above 50 years would not have such benefit.

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

18. In the case of Smt. Manorama Jha & Ors. v. National Insurance Co. Ltd. & Ors., F.M.A. 507 of 2006, our Division Bench considered the issue of future prospect and observed as follows:

It is well-settled principle of law that in a motor accident claim two types of damages are contemplated, one being the pecuniary and the other being non-pecuniary. Pecuniary damage is actual financial loss the family suffers due to the death of the only breadwinner in the accident or loss of income in case of injured victim, whereas non-pecuniary damage takes care of the pain and suffering, the loss of estate, loss of consortium the family suffers in case of death of a victim or the pain and suffering for the injury suffered by an injured victim. Future prospect, in our considered view, would come within the scope of pecuniary damage. A person who was having definite source of income having a smooth channel of financial development by way of increase of salary or otherwise, is deprived of such benefit in view of the accident. The future prospect, in the case of Sarla Verma (supra), has taken note of such eventuality. However, the issue of compassionate appointment was not considered. We are aware of the fact that the compassionate appointment cannot create any hindrance, in getting just and appropriate compensation in motor accident cases. At the same time we cannot ignore such issue while considering the future prospect as per the prescribed guideline so stipulated in the case of Sarla Verma (supra).

The matter may be viewed from another angle. Future prospect is considered, as observed hereinbefore, taking into account the future increase in salary, dearness allowance, etc., those benefits are already availed by the widow and that too, at a higher level than the deceased. Considering this backdrop it would not be proper for us to consider the issue of future prospect in the present case.

19. On a combined reading on the earlier precedents we are of the view there could not be in a straitjacket formula for awarding just compensation u/s 166. All relevant

circumstances relating to the accidental death and the precarious condition of the victim's family should be taken into consideration to arrive at a just compensation. Vimal Kanwar (supra), in our view, was rendered under Article 142 of the Constitution and we are not permitted to apply such decision ignoring the earlier precedents on the issue and the law on the subject. Future prospect, in our view, would mean the prospect of the victim had he been in service till his retirement that would presuppose promotion, increment and other financial development. In the case in hand, the victim was a Group "D" employee. He did not have better qualification to get any higher post, at least not tendered in evidence. A Group "D" employee would always retire as such unless he is considered for a Group "C" post through appropriate process provided he had the qualification. However, considering his long span of service he would have got the career advancement benefit and other incremental benefit that could be considered as a future prospect and that could not be, in no stretch of imagination, would amount to 30% or 50% as contemplated in Sarla Verma (supra). Sarla Verma (supra), considered an issue keeping in mind the overall development of the employee having a permanent job. Such thinking would not fit in a case of a Group "D" employee. Moreover, such future prospect is considered keeping it in the mind; the victim's family was deprived of such benefit. We cannot ignore the issue of compassionate appointment. The widow being the appellant No. 1 did not produce her salary certificate. We do not know whether she would be better placed than her husband as the Division Bench found in the case of Smt. Manorama Jha (supra). Hence, we cannot blindly follow Sarla Verma (supra), on the issue. The victim had 24 years of service left. At least two career advancement benefits he would have got had he been in service, apart from other incremental benefits. Considering such issue we would add Rs. 50,000 as lump sum amount payable to the appellant.

Direction:

20. The awarded amount would carry interest at the rate of 5% per annum on and from 26th April, 2007 being the date of filing of the claim application until the date of deposits/payment whichever is earlier.

21. The differential awarded sum would also carry interest at the same rate on and from 26th April, 2007 until payment.

22. The Insurance Company is directed to pay the differential 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:

With above directions the appeal is disposed of along with application without any order as to costs.

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

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

Mrinal Kanti Chaudhuri, J.

I agree