

(2005) 05 CAL CK 0033

Calcutta High Court

Case No: F.M.A.T. No. 4207 of 2004 and F.M.A. No. 63 of 2005

Shib Chandra Mishra and Others

APPELLANT

Vs

United India Insurance Company
Ltd. and Others

RESPONDENT

Date of Decision: May 11, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A

Citation: (2006) 1 CHN 508

Hon'ble Judges: P.K. Samanta, J; Maharaj Sinha, J

Bench: Division Bench

Advocate: K. Banik and Biswarup Biswas, for the Appellant; N.K. Rakshit, for the Respondent

Judgement

1. By virtue of our earlier order both the above application and the appeal are taken up for hearing on merits and both are disposed of by this order. It should be pointed out that the only point raised in this appeal is as to whether the learned Claims Tribunal was right in taking into account the pension amount received by the wife of the deceased victim for the purpose of determining the amount of compensation in favour of the claimants/appellants herein.

2. The short facts are that the deceased victim Laxman Mishra died in a motor accident on 1st January, 1999 at about 6.30 a.m. in the morning while he was riding a bicycle on National Highway-34. The accident took place as the bicycle of the deceased victim was hit by a truck which was proceeding towards "Berhampore from Calcutta" Needless to mention the victim was knocked down on the ground and thereby received severe injuries, later the said Laxman died in the Nadia District Hospital, at Saktinagar.

3. The owner of the offending vehicle did not contest the proceedings. However, the United India Insurance Company contested the claim case in the learned Claims

Tribunal.

4. The claimants, according to the learned Tribunal were (and are) the unfortunate sons and daughters and the wife of the said deceased victim, Laxman Mishra, upon consideration of the facts and circumstances of the case and the evidence on record, the learned Tribunal found that the monthly salary of the said Laxman Mishra before his death was Rs. 5,473/- and that he was a Government employee and working as a Guard in the Public Works Department (Roads), at the office of the Executive Engineer, N. H. Division-VI, at Krishnagar.

5. The learned Tribunal also found that at the time of the accident, the deceased victim was aged about 49 years as he was born on 27th May, 1950. According to the learned Tribunal, the deceased victim would have earned a total sum of Rs.7,06,017/-, if he had not died in the said accident and in computing the said figure, the learned Tribunal proceeded on the basis that the deceased victim would have earned the said monthly salary of Rs. 5,473/- for a period of 129 months altogether before his normal age of retirement. The learned Tribunal also found that the wife of the deceased victim was receiving a sum of Rs. 2,500/- by way of pension per month and this amount of pension was liable to be deducted from the total amount of compensation as determined by the learned Tribunal as according to the learned Tribunal, the wife of the deceased victim "would not have got such amount of pension", if her husband had been alive and worked as a Government employee as above.

6. The total amount of pension receivable by the wife was found to be Rs. 3,22,500/- on the basis of Rs. 2,500/- per month multiplied by the above 129 months. The learned Claims Tribunal proceeded on the basis that since the wife would receive a total amount of Rs. 3,22,500/- by way of pension from the employer of her deceased husband the said amount of pension was deductible and the learned Claims Tribunal, in fact, deducted the said amount from the total amount of compensation which the learned Tribunal determined to be Rs.7,06,017/- on the basis of the above monthly earning and/or income of the deceased victim. After such deduction of Rs. 3,22,500/- from the total amount of compensation of Rs.7,06,017/- the actual amount of compensation became Rs. 3,83,517/-. However, the learned Tribunal also deducted the one-third amount on account of the personal expenses of the deceased victim from the said amount of Rs. 3,83,517/- and on that basis the amount of compensation stood at Rs. 2,55,678/-, a sum of Rs. 9,500/- was also added to the above amount on account of "funeral cost", "loss of estate" and "loss of consortium" and the total amount of compensation after said addition became Rs. 2,65,178/-. Since, the claimants/appellants received a sum of Rs. 50,000/- by way of statutory compensation, the said amount was deducted from the said amount of Rs. 2,65,178/- and the claimants/appellants were thus entitled to receive a total sum of Rs. 2,15,000/- by way of compensation. The Insurance Company was also directed to pay the said amount of Rs. 2,15,000/- to the petitioner within a period of three

months from the date of the award and in default, the Insurance Company was to pay interest at the rate of 8% from the date of filing of the petition till its realisation.

7. It is submitted by the learned Advocate Mr. Banik, appearing on behalf of the appellants that the learned Tribunal committed an error in taking into account and in deducting the amount of pension the wife of the deceased victim was to receive in determining and computing the compensation in favour of the claimants/appellants in the first place. The learned Tribunal, he submits, should not have taken that into account such pension as the amount of pension, provident fund, family pension, cash balance, shares and/or fixed deposits have already been held to be not a pecuniary advantage which can be taken into account for determining the amount of compensation in a case of a motor accident. Thus, by taking into account the said pensionary amount in determining the compensation and by deducting the same from the amount of compensation so determined, the learned Claims Tribunal committed an error of its own jurisdiction.

8. In support of the above contentions or submissions, the following decisions are relied on:

Helen C. Robello v. Maharashtra State Road Transport Corporation and Anr. 1991(1) SCC 90 also reported in 1999(1) TAC 1, and in the case of Smt. Ugri Devi and Ors. v. United India Insurance Company Ltd. and Anr. reported in 2001 CWN 424, and an unreported judgment of this Hon"ble Court in F.M.A.T. No.1190 of 1999, F. M. A. No. 336 of 2001, Rita Bhattacharjee and Ors. v. Kheman Chand Paswan and Anr.

9. On the basis of the above decisions both of the Supreme Court and this High Court, the learned Advocate Mr. Banik argues that it is by now well- settled that the amounts received on account of provident fund, family pension, cash balance, fixed deposits etc. cannot be considered to be pecuniary advantage for the purpose of assessment of compensation under the Motor Vehicles Act, 1988 and this position has been amply made clear by the above decisions both of the Supreme Court and our Court and other High Courts. Since, in the instant case, the learned Tribunal deducted the amount of pension received and/or receivable by the wife after the death of her husband, the learned Tribunal committed a serious error as the amount of pension cannot in any event be deducted from the amount of compensation in the first place as the same is not a pecuniary advantage which the wife of the deceased victim received from the employer of her husband.

10. After having considered the above decisions and the facts and circumstances of the case and the judgment of the learned Tribunal, it cannot, however, be disputed that the learned Tribunal committed an error in deducting the amount of pension that the wife of the deceased victim received or was to receive from the amount of compensation awarded by the learned Tribunal.

11. In our opinion, the learned Tribunal ought not to have deducted the said amount from the award of compensation in the first place.

12. The two decisions relied upon by the learned Advocate on behalf of the Insurance Company are as follows:

The Divisional Manager, [Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another](#), .

13. After having considered the above two decisions relied upon by the learned Advocate on behalf of the Insurance Company, we are of the opinion that the said two decisions have nothing to do with the questions raised in this appeal and as such they cannot be said to be applicable to the present case in the first place. Therefore, a detailed discussion on the above two decisions is not necessary for the purpose of deciding the questions involved in the present appeal. Since, we are of the opinion that the learned Tribunal committed an error in deducting the amount of pension received or receivable by the wife of the deceased victim from the total amount of compensation awarded by the learned Tribunal, we think that the award in question of the learned Tribunal should be modified to the following extent:

Since the method of computing compensation prescribed in the Second Schedule to Section 163A of the Motor Vehicles Act is generally treated to be the safer guidance for assessment of compensation, the same is followed accordingly, as the monthly salary of the deceased victim was found to be Rs. 5,473/- the same amount is taken into account as the basis of computing compensation, if one-third of the said sum is deducted from the monthly salary of the deceased victim on account of his personal expenses had he been alive then a sum of Rs. 3,652/- becomes the monthly income to which the family of the deceased victim, namely the appellants herein become entitled.

14. Since the deceased victim was aged about 49 years at the time of his death a multiplier of 13 under the provisions of the said Second Schedule is applied and on that basis a sum of Rs.5,69,712/- becomes the total amount on account of loss of earning and/or income of the family of the deceased victim. To this sum if a sum of Rs.9,500/- is added on account of loss of consortium, loss of estate and the funeral expenses, then a sum of Rs.5,79,212/- becomes the total amount of compensation to which the appellants become entitled.

15. Since under the order of the learned Tribunal the Insurance Company deposited a sum of Rs.2,15,000/- in learned Tribunal by way of cheques, the Insurance Company is directed to pay interest at the rate of 8% on the said amount of Rs.2,15,000/- from the date of application till the said amount was deposited in the Tribunal i.e. on 3rd February, 2005. The balance amount of compensation, thus, becomes Rs.3,64,212/- Since the appellants have already received a sum of Rs.50,000/- by way of statutory compensation the same amount is deducted from the above balance amount of compensation, thus a total sum of Rs.3,14,212/- is payable and the Insurance Company is directed to deposit the said amount by way of account payee cheque drawn in the name of the second appellant herein, the

wife of the deceased victim in the Claims Tribunal within six weeks from date together with interest at the rate of 8% from the date of application till such deposit or payment is made as above. Once the above deposit is made by the Insurance Company in the learned Claims Tribunal, the second appellant will be entitled to withdraw the same upon proper identification and receipt.

16. The second appellant herein, the wife of the deceased victim shall invest a sum of Rs. 1,00,000/- by way of fixed deposit with any Nationalised Bank preferably with the State Bank of India in the joint name of herself and her minor son, the first appellant herein and keep the said sum deposited until her minor son attains majority. The interest accrued on the said sum of Rs. 1,00,000/- shall be spent by the second appellant for the welfare of her minor son. The balance amount of compensation granted by us namely Rs.2,14,212/-together with interest shall be enjoyed and/or utilised by the second appellant and her sons and daughters, namely, the other appellants herein, as will be decided by the second appellant as the wife of the deceased victim and the mother of the other appellants,

17. Both the appeal and the application are, thus, disposed of.

18. There will be no order as to costs.

19. The lower Court records be sent down immediately.

20. Urgent xerox certified copy of this order, if applied for, be supplied to the parties, as expeditiously as possible.