
Shib Chandra Mishra and Others Vs United India Insurance Company Ltd. and Others

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

Court: Calcutta High Court

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.