(1999) 12 CAL CK 0026

Calcutta High Court

Case No: First Miscellaneous Appeal Tender No. 3808 of 1998

Puspa Rani Saha		APPELLANT
	Vs	
New India Assurance Company Ltd.		RESPONDENT

Date of Decision: Dec. 22, 1999

Acts Referred:

- Motor Vehicles Act, 1988 - Section 168

Citation: (2000) 1 ILR (Cal) 289

Hon'ble Judges: Satyabrata Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: K. Banik, for the Appellant;K.K. Das, for the Respondent

Final Decision: Allowed

Judgement

Satyabrata Sinha, J.

This appeal is directed against a judgment and award dated November 13, 1997 passed by Sri S.K. Chakraborty, Judge, M.I.C. Tribunal, 4th Court, Barasat whereby and whereunder the said Tribunal allowed the claim application filed by the claimant-Appellant in part and directed payment of compensation of Rs. 32,000.00 only. The said figure was arrived at on the basis that three Appellants should be paid compensation at the rate of Rs. 10,000.00 each on account of loss of company, mental pain and agony besides the funeral expenses of the victim estimated at Rs. 2,000.00.

2. The learned Tribunal below refused to award any amount by way of compensation on other heads on the ground that whereas the monthly income of the victim was Rs. 1,354.00, his widow is drawing pension at the rate of Rs. 2,000.00 per month.

3. The only question which has been raised in this appeal is as to whether the learned Tribunal below was correct in arriving at his aforementioned findings.

4. The evidence of P.W. 1 on the aforementioned question is to the following effect:

On the date of the accident my father was crossing the road. Not a fact that my father failed to hear the sound of horn since he was unmindful, or that the accident took place due to his own fault or that he did not draw pension of Rs. 1,354/- . My mother is getting pension about Rs. 2,000/- p.m.

5. It is, therefore, not clear as to whether the inference of the learned Tribunal below to the effect that whereas, the deceased used to draw pension of Rs. 1,354.00, after his death his widow would be getting-family pension at the rate of Rs. 2,000.00 p.m. Be that as it may, the question which arises for consideration in this appeal is as to whether the amount of family pension can be taken into account.

6. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, the Apex Court keeping in view the provisions of Motor Vehicles Act, inter alia, Held that the heirs received family pension even otherwise than the accidental death and therein no co-relation between the two for the purpose of adjudicating upon claims as regard compensation in respect of accident involving the death of or bodily injury to. Thus, the amount of compensation is attributable to the accident involving the death or bodily injury. The said provision confers a higher right then the common law right and/or provision of other statute as for example Fatal Accidents Act.

7. The Andhra Pradesh High Court in S. Ashraf Bi v. Shaik Madar Sab and Ors. 1993 (3) A.J.R. 295, held that there is a distinction between the benefits received on account of the death of a person and the benefits which are payable on his death. Reference in this connection may also be made to Smt. Sunder and Ors. v. Hem Singh and Ors. 1993 (2) A.J.R. 173 wherein a learned Single Judge of Rajasthan High Court held:

The tort-feasor cannot be allowed to take the benefit of the pension received by the claimants by getting the credit for them in mitigation of the damages that he must pay. There is a difference between the benefits received on account of the death and those which are payable on the death of a person. The grant of pension on attaining the age of superannuation is the benefit which is available independently of the death but is payable on the death or on the date of the superannuation. The pensionary benefit which one inherits on account of the qualifying service or the death cannot be denied to a person entitled to such benefits on the pretext that he has received such other benefits. It is not the pecuniary gain as such but is an acceleration of pecuniary gain. It may be the value of the acceleration that can be taken into account while determining the amount of compensation and not the value of the benefits itself and some deduction, if possible, can be made for the payment received earlier. But the other aspect of the case, also, cannot be ignored and the amount of family pension cannot be slashed from the amount of compensation because the deceased has put in the qualifying service for the grant

of pension. If he would have survived till the age of superannuation, he would have put-in 11 years more qualifying service for pensionary benefits and in that circumstance he would have got more pension than what the claimants are getting new and after the superannuation age, the pension received by him would have formed a part of his estate and the dependants would have been entitled to inherit the same. In this view of the matter, also, taking the over-all view of the matter, the amount of family pension received by the claimants cannot be deducted from the amount of compensation determined u/s 168 of the Motor Vehicles Act. The learned Judge of the Tribunal, thus, committed an error in reducing the amount of pension received by the claimants while determining the compensation.

8. Yet again in Smt. Halima Khatoon v. N.D.M.C. and Ors. 1993 (2) A.J.R. 504, the Delhi High Court has also taken the same view. Reference in this connection may also be made to a judgment of Madras High Court in Tata Engineering and Locomotive Company Ltd. v. Anantha Lakshmi 1995 (1) T.A.C. 602 wherein Srinivasan, J. (as His Lordship then was) negatived the contention that upon the death of the deceased, his wife had been given employment on compassionate ground and the salary received by her should be taken into consideration while awarding the amount of compensation.

9. In Geethakumari and Others Vs. Rubber Board and Others, the Kerala High Court took the same view as that of the Madras High Court and stated that no portion of the pension, insurance money, gratuity, provident fund or any gratuitous payment received by the legal representatives of a deceased employee can be deducted from the amount of compensation payable to them under the Motor Vehicles Act. Reference in this connection may also be made to Khashti Devi Vs. Amar Nath and Others, wherein a division bench of Madhya Pradesh High Court held:

Deduction of family pension was obviously done by the Claims Tribunal on the assumption that it was a ''death benefit''. The matter is, however, not as simple as that. The general principle, no doubt, is that in assessing the amount of compensation to be paid to the dependants of the victim of a motor accident, one has to balance the financial loss to the dependants on one side and financial gain or benefit directly arising from the death of the victim on the other. So, the figure of family pension being received by the dependants of a victim of the motor accident may be deducted or ''balanced'' only if it can be regarded as a ''death benefit''. It would be necessary in that case to know the terms and conditions of the pension and the period for which the dependants would be entitled to get it. It may turn out, when these things are ascertained, that the pension being received by the dependents should really be regarded as deferred fruit of service, industry, thrift or contributions of the deceased employee or as an incident of statutory service rules, or result of employment contract. In all such situations, it would be wrong to deduct or ''balance'' the amount of pension by wrongly considering it to be a ''death benefit''.

10. The same view has been taken by the Rajasthan High Court in Smt. Suki and Others Vs. Hem Singh and Others,

11. Mr. Das, the Learned Counsel appearing on behalf of the Respondents, however, on the other hand, relied upon a full bench decision of the Karnataka High Court in Smt. Parvati @ Baby and Others Vs. Hollur Hallappa and Others, Unfortunately, the aforementioned decision, is contrary to the decision of the Supreme Court in Helen C. Rebello v. Maharashtra State Road Transport Corporation Supra. Keeping in view the decision of the Apex Court in the said case we cannot subscribe to the views of the full bench of the Karnataka High Court wherein the law has been stated in the following terms:

1. The family pension amount is a pecuniary benefit which has to be taken note of to balance the pecuniary loss, to arrive at the net loss, as a consequence of death, which constitutes the measure of damages;

2. While assessing compensation as per the multiplier method (Davies method) in the case of the death of an employee in pensionable service, a deduction on account of family pension can be made (as a pecuniary benefit arising out of the death) only if the pension factor had been taken note of as a part of monthly emoluments of the deceased, while calculating the loss of dependency. If the loss of dependency is calculating only on the monthly emoluments received, without adding the value of the pension factor to such emoluments, then it is unnecessary to make any deduction on account of receipt of family pension.

3. The decisions of this Court in Parvatamma and Others Vs. Syed Ahmed and Others, and Shantha and Others Vs. Channabasappa Dyamappa Gadadavar and Another, are correctly decided insofar as they hold that family pension should be taken into account while assessing damages. But while calculating the compensation by using the multiplier method, they fell into an error in deducting family pension, as the corresponding pension factor had not been taken into account for arriving at the pecuniary loss and only the actual emoluments had been taken as the basis for arriving at the monthly pecuniary loss.

12. We are, therefore, of the view that the learned Tribunal below erred in law in arriving at the said decision.

13. Apart from the said fact assuming that P.W. 1, mother was getting family pension after the death of his father in the said accident, the amount of pension which was being received by the deceased being Rs. 1,354.00 and the amount of the family pension received by mother being Rs. 2,000.00 evidently the Petitioner''s father would have get a higher amount pension in the year 1998 when the matter was decided as this Court can take judicial notice of the fact is always lower than the actual pension received by a retired employee. In any view of the matter, the amount of family pension could not be taken into account while considering the pecuniary loss suffered the children of the deceased.

14. The deceased was 59 years old at the time when the accident had taken place. He was drawing a pension of Rs. 1,354.00 p.m., the 2/3rd whereof would be Rs. 906.00 and as such the multiplier of 8 should be applied in this case. Furthermore, the interest at the rate of 12% per annum from the date of filing of the application till the date of actual payment is payable to the Appellant.

15. For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore.

M.H.S. Ansari, J.

16. I agree.