

(2003) 07 CAL CK 0044

Calcutta High Court

Case No: F.M.A. No. 1598 of 2000

Pravat Chandra Dey

APPELLANT

Vs

Oriental Insurance Co. Ltd. and
Another

RESPONDENT

Date of Decision: July 25, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A, 166

Citation: (2004) 1 ACC 794 : (2005) ACJ 877

Hon'ble Judges: Sadhan Kumar Gupta, J; Alope Chakrabarti, J

Bench: Division Bench

Advocate: Saidur Rahaman, for the Appellant; Amit Gangopadhyay and Subir Banerjee, for the Respondent

Judgement

Alope Chakrabarti, J.

The relevant facts of the case as appear from the records are that on 26.11.1993 at about 9.30 hours, one Ujjal Dey being the son of the claimant father was standing on the left side of the National Highway 31 at Tekatull when offending vehicle coming from the Dhupgudi side at a very high speed ran over the said Ujjal Dey as a result whereof he sustained injuries and ultimately succumbed to such injuries on the spot. The accident occurred due to rash and negligent driving of the offending vehicle.

2. The claim application was filed u/s 166 of Motor Vehicles Act, 1988. The Tribunal by its judgment and order dated 30.6.1997 dismissed the application and challenging the same the present appeal was filed.

3. Heard Mr. Saidur Rahaman, learned counsel for the appellant, who advanced threefold argument. The first contention of appellant is that the Tribunal erroneously dismissed the petition on the ground that the victim was a minor boy aged 8 and his parents were not dependent on him and, therefore, claimant father

is not entitled to any compensation. It is stated that such a view is contrary to the law as decided in various cases including the judgment in [M.P. State Road Transport Corporation and Another Vs. Sohanlal and Others,](#) .

4. The second contention of the appellant is that though accident took place in the year 1993 before the Motor Vehicles Act was amended in the year 1994 but the assessment of compensation should be made as per Second Schedule to the Motor Vehicles Act introduced subsequently in the year 1994 and in support of such contention law was relied on as decided in the case of [Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others,](#) .

5. Last contention of appellant is that claimant is entitled to get interest on the amount of compensation to be calculated from the date of filing the application.

6. Learned counsel for the respondents contended that the appellant is not entitled to any relief in the present case for the reasons recorded in the impugned judgment. Learned counsel for the respondents also relied on the judgment in the case of [Ashwani Kumar Mishra Vs. P. Muniam Babu and Others,](#) .

7. It is stated that though for fixing the amount or compensation in cases of accident, some guesswork or hypothetical considerations are involved, such elements are required to be viewed with objective standards and the court should not base its opinion merely on speculation or fancy though conjectures to some extent are inevitable.

8. Considering the aforesaid contentions, I find that the claim application was dismissed considering the fact that the victim was a minor boy aged about eight years and his claimant father was not dependent on him. In the case of [M.P. State Road Transport Corporation and Another Vs. Sohanlal and Others,](#) , though the victim was an adult was having sufficient income but his claimant father was having his own earnings out of which both the parents were maintaining themselves and in such factual background entitlement to payment of compensation on death of such a son was under consideration. In the said case it was observed by the Division Bench of Madhya Pradesh High Court as follows:

"(9) Damages are assessed in reference to a reasonable expectation of pecuniary benefit as of right or otherwise from the continuance of life. The parents are entitled to recover the present cash value of the prospective service or pecuniary benefit from the deceased. It does not matter that their own income is sufficient for their maintenance."

9. It has been further observed in the said judgment as follows:

"(10) ...The parents who are earning are also entitled to reasonable expectation of pecuniary benefit and services from their children. In old age their earning capacity is diminished and they reasonably expect support and maintenance from their children. In case of the death of the children in accident the parents must be

awarded the present cash value of the future pecuniary benefit and service from them."

10. Similar conclusion was reached by the Division Bench of Himachal Pradesh High Court in the case of [Himachal Road Transport Corporation and Another Vs. Bimla Devi and Others](#), and by the Division Bench of Allahabad High Court in the case of [New India Assurance Co. Ltd. Vs. Vibha Sengar and Others](#), .

11. On behalf of respondents, nothing has been shown to contradict the aforesaid contention of the appellant. Considering the observations made by various courts of law also I find that even in case of fatal accident the compensation to parents cannot be refused on the ground that the victim was a minor boy and was not having any income of his own nor the parents were dependant of such minor victim. It is undisputed that parents have reasonable expectations of financial support from their children particularly in the old age of the parents they can expect they would be supported financially by their son who would be of matured age at that time. I also accept that award should be made at the present value of the future pecuniary benefit and service from a son.

12. With regard to second contention of the appellant, I find that the said aspect was considered in the case of [Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others](#), and it was held by the Apex Court as follows:

"...In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the Motor Vehicles Act, Though it was formulated for the purpose of Section 163-A of the Motor Vehicles Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned."

13. The judgment further shows that it was a case relating to accident occurred on 20.3.1986. Therefore, in the present case also applying the said law the provisions of Second Schedule to the Motor Vehicles Act can be applied for assessment of compensation.

14. With regard to the third and last contention of the appellant, I do not find any reason has been shown on behalf of the respondents as to why the claimant will not be getting interest on the compensation during the pendency of the application. No fault on the part of the claimant has been shown which disentitles him from interest. Therefore, in the facts of the present case, the claimant will be entitled to the interest on the amount of compensation at the rate of 9 per cent per annum from the date of making the claim application till realisation.

15. Therefore, the victim being a child aged 8 years and having no income, notional income can be taken as Rs. 15,000 deducting 1/3rd for his personal income, loss of annual income can be calculated as Rs. 10,000 taking the age of boy at the time of death 8 years the multiplier of 15 should be applied. Therefore, the amount of

compensation comes to Rs 10,000 x 15 = Rs. 1,50,000. Therefore, the respondents are held liable to pay Rs. 1,50,000 as compensation along with interest at the rate of 9 per cent per annum from the date of claim application till realisation. As the respondent No. 1 admittedly is the insurer, the respondent No. 1 is directed to deposit the aforesaid amount of compensation with interest at the aforesaid rate from the date of application till the deposit before the Tribunal within a period of six weeks from the date and in case of default of such deposit, the claimant will be entitled to realise the amount in accordance with law with further interest at the rate of 9 per cent per annum till realisation.

Sadhan Kumar Gupta, J.

16. I agree.