Oriental Insurance Co. Ltd. Vs Renu Rampuria and Others

Court: Calcutta High Court

Date of Decision: July 5, 2007

Acts Referred: Motor Vehicles Act, 1988 â€" Section 140, 166, 171

Citation: (2008) ACJ 2134

Hon'ble Judges: Jyotirmay Bhattacharya, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Indranath Mukherjee and Kunal Paul, for the Appellant;P.K. Drolia and Kalyani Bhattacharyya, for the Respondent

Judgement

Alok Kumar Basu, J.
One Renu Rampuria for self and on behalf of her son and daughter filed claim application being registered as

M.A.C.C. No. 50 of 2003 over death of her husband in an accident taken place on 27.9.2002 at 12.45 p.m. involving a minibus bearing

registration No. WB 11 -3481. In her claim petition Renu Rampuria has alleged that her husband was knocked down by the offending vehicle

driven in a rash and negligent manner in front of premises No. 210, Mahatma Gandhi Road. Claimant lodged a claim for Rs. 27,05,000 to

compensate the pecuniary loss caused by the sudden death of the victim who was aged 42 years at the time of accident and who was earning Rs.

14,000 to Rs. 15,000 per month from his business.

2. The claim application finally came up for consideration before the learned Judge of Ninth Bench of the City Civil Court where Oriental Insurance

Co. Ltd. contested the claim application.

3. The learned Judge, on examination of the claim application along with written objection filed against it by the contesting insurance company and

after considering both oral and documentary evidence adduced by the parties, finally directed the insurance company to pay a total amount of Rs.

13,05,759 after deducting amount of Rs. 50,000 already paid by the insurance company u/s 140 of the Motor Vehicles Act to Renu Rampuria

and her three children in equal share.

4. Oriental Insurance Co. Ltd. being aggrieved by and dissatisfied with the order of the learned Judge preferred this F.M.A. No. 614 of 2006 and,

at the same time, Renu Rampuria along with her children preferred a cross-objection against the order of the learned Judge being C.O.T. No.

2726 of 2006 challenging the award being insufficient and not commensurate with the loss suffered by them due to the accidental death of the

victim.

5. By an order of this Court both the miscellaneous appeals and cross-objection have been taken up together for disposal after hearing the learned

advocate of the respective parties. It is pertinent to mention here that mother of the victim Kesari Devi Rampuria has been subsequently added as a

claimant by an order of this High Court without any objection from either side.

6. At the time of hearing of both the appeal and the cross-objection, the learned advocate appearing for the insurance company and in support of

the appeal being F.M.A. No. 614 of 2006 submits before us that from the statement of facts as incorporated in the claim application filed u/s 166

of Motor Vehicles Act it was very much clear that two vehicles were involved and it has also come out from the cross-examination of PW 2, but

the learned Judge did not discuss anything in the judgment impugned in this appeal regarding involvement of the other vehicle and only the vehicle

covered under an insurance policy issued from the present appellant was held liable for the rash and negligent driving.

7. Learned advocate for the appellant insurance company submits that PW 1 claimant herself could not state anything about rash and negligent

driving of the offending vehicle since she was not present at the place of accident and PW 2 only witness examined by the claimant did not utter

anything regarding the rash and negligent driving and that being the position of fact and evidence on record, the learned Judge was not justified in

coming to the conclusion that driver of the minibus was rash and negligent and was responsible for the accident and for that reason, the insurance

company cannot be called upon to pay any compensation.

8. Learned advocate for the appellant insurance company has thereafter challenged the quantum of compensation fixed by the learned Judge. The

learned advocate submits that it has come from the evidence of PW 1 herself and also from the evidence of OPW 2 that after death of her husband

claimant became partner of the firm and she has been receiving about Rs. 10,000-Rs. 12,000 per month as remuneration and the learned Judge of

the Claims Tribunal while calculating the amount of compensation did not take into consideration this income of the claimant. Learned advocate

submits with reference to the ratio of decision rendered in the case of Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 ACJ 179, by the

Hon"ble Apex Court and also in the case of The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , that in calculating pecuniary loss

to the defendants in a claim case a balance is to be made between the loss to the claimants of the future pecuniary benefit on the one hand and on

the other any pecuniary advantage which comes to them by a reason of the death of the victims and naturally, in this case when from evidence on

record it was satisfactorily proved that the claimant after death of her husband became a partner in his place and received a considerable amount

of monthly income, that income must be taken into consideration while calculating the compensation amount and it would appear after considering

the pecuniary advantage accrued to the claimant since the death of her husband, nothing is payable to her and her children on account of the

accidental death of her husband.

9. Learned advocate for the appellant insurance company, therefore, submits that when there was no evidence to support the allegation that the

offending vehicle was rash and negligent and when the Tribunal erred in law in not taking into consideration the pecuniary gain accrued to the

claimant after death of the victim, the judgment and order of the Tribunal cannot be sustained either in fact or in law.

10. Learned advocate representing the claimants-respondents while refuting the submissions of the learned advocate for the appellant insurance

company submits before us that PW 2 in his cross-examination has clearly stated that the offending vehicle at a high speed and in a dangerous

manner while trying to overtake another minibus knocked down the victim and this was sufficient to support the allegation that the offending vehicle

was being driven in a most rash and negligent manner and it was solely responsible for the accidental death of the victim. The learned advocate for

the respondents submits that this statement of PW 2 was not challenged in any manner by the insurance company during trial before the learned

Tribunal and naturally, after considering the evidence on record along with F.I.R. and post-mortem report of the victim, the Tribunal rightly

concluded that the offending vehicle was rash and negligent and that was the cause of the accident and death of the victim.

11. The learned advocate for the respondents submits that in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road

Transport Corpn. and Another, and also in the case of Smt. Mousumi Hansda and Others Vs. Oriental Insurance Co Ltd. and Another, , the point

raised by the appellant insurance company was sufficiently answered and in view of the ratio of decision rendered in those two cases, the

calculation of the learned Tribunal cannot be called in question either in fact or in law.

12. The learned advocate for the respondents in support of the cross-objection contends that the claimants deposed before the Tribunal that

monthly income of the victim was Rs. 14,000 to Rs. 15,000 and on that calculation the annual income of the victim would be Rs. 1,68,000 per

year and the Tribunal without any valid reason did not accept this calculation and relying on the income tax return of the victim, the Tribunal

wrongly calculated the compensation amount payable by the insurance company and that apart, the Tribunal also did not consider the statutory

provisions regarding payment of interest as contained in Section 171 of the Motor Vehicles Act and hence, the compensation awarded by the

Tribunal must be enhanced.

13. We have considered all the decisions referred to by the learned advocates of both the sides in connection with the appeal as well as the cross-

objection. From the judgment and order of learned Tribunal and also after hearing submissions of the learned advocates of both the sides we find

that PW 2 in a most assertive manner deposed regarding rash and negligent driving of the offending vehicle and over this point there was practically

no challenge from the insurance company during trial and that apart, insurance company did not produce any evidence to prove otherwise.

Naturally, having regard to the fact and evidence on record, the Tribunal came to the conclusion that the offending vehicle was responsible for the

accidental death of the victim and we do not find any material on record to differ from this finding.

14. After considering the grounds of the appeal as well as the grounds taken in the cross-objection, we find that quantum of compensation is the

main dispute and in this regard after hearing submissions of both the sides we find that there is practically no dispute regarding 15 as the multiplier

in the case of calculation of the compensation amount when undisputedly the victim was in the age group of 40 and 50 at the time of the accident.

15. The real controversy centres round the quantum of income against which the multiplier 15 is to be applied. The Tribunal relying on the income

tax return of the victim at the relevant period considered Rs. 1,34,630 as the income of the victim per annum and applying the multiplier 15 and

after deducting 1/3rd of total income towards personal expenses of the victim the learned Tribunal determined the compensation amount payable

by the insurance company.

16. Learned advocate for the appellant both during his submissions as well as taking inspiration from the ground of appeal confines his argument on

the point that the income of wife of the victim being partner of the firm after the death of the victim should have been taken into consideration and

should have been deducted from the total income of the victim taken as the basis of calculating compensation amount and that apart the Tribunal

was not justified accepting Rs. 1,34,630 as the total income, because the income shown in the income tax return under the head income from other

sources should have been deducted from the total income. The learned advocate for the claimants, on the other hand, relying on the ratio of

decisions of both the Hon''ble Supreme Court as well as of this High Court tried to convince us that in a claim case arising out of the motor

accident where the only earning member of the family lost his life and when he was only at the age of 42, taking into account the future prospect of

the victim of the accident and its probable consequences upon the members of his family, even if any pecuniary gain accrues to the family members

that cannot be taken into consideration while calculating the pecuniary loss suffered by the family due to sudden death of the earning member who

had a bright prospect both for himself and for the family.

17. After taking into consideration the decisions relevant on the issue and cited by the Bar, we are of the clear opinion that when victim was

undisputedly 42-year-old and when he had further prospect of earning for his family, in the fact and circumstances of the present case, the learned

Tribunal did not commit any error in not taking into consideration the income earned by his wife being partner of the firm. Now, regarding

computation of the annual income of the victim we find on careful consideration of the income tax return that the total income of the victim should

be Rs. 1,17,545 and not Rs. 1,34,630, because income from other sources which was to the tune of Rs. 48,562 must be deducted from the total

income of the victim, because that income continued to exist even after death of the victim. We have carefully considered submissions of the

learned advocate for the respondents and we do not accept his contention that income of the victim should have been accepted as Rs. 1,68,000

relying on the oral deposition of the wife of the victim, because when documentary evidence in the form of the income tax return was produced

before the learned Tribunal, real testimony of wife of the victim cannot have any importance.

18. We have already stated that there is no doubt regarding application of 15 as the multiplier in calculating the compensation amount and when we

find from record that Rs. 1,17,545 (i.e., Rs. 89,064 income from business plus Rs. 28,481 income exempted from tax) should be the annual

income of the victim, after deducting 1/3rd of the amount as provided in the statute we find that total compensation payable by the insurance

company would be Rs. 11,75,450 plus Rs. 9,500 minus Rs. 50,000 which has already been paid by the insurance company u/s 140 of the Motor

Vehicles Act.

19. We find from the judgment and order of the learned Tribunal that learned Tribunal did not consider at all the question of payment of interest as

provided in Section 171 of the Motor Vehicles Act and, therefore, we direct the O.P. insurance company to pay interest at the rate of 8 (sic) per

cent (simple) on the total compensation amount from the date of filing of the application u/s 166 of the Motor Vehicles Act till the compensation

amount is deposited either before learned Tribunal or with the learned Registrar General of this High Court.

20. Thus, after hearing submissions of both the sides we hold that insurance company shall pay a total sum of Rs. 11,34,950 along with 6 per cent

simple interest from the date of filing of the claim application up to the date of this order amounting to Rs. 3,00,722 to the five claimants in all

including mother of the victim who was added during pendency of the appeal and the cross-objection.

21. In the light of our above discussion, we allow F.M.A. No. 614 of 2006 and C.O.T. No. 2726 of 2006 in part without any order as to costs to

either side. The impugned order, thus, stands modified to the above extent.

22. We find from record that insurance company has already deposited the entire amount as determined by the Tribunal with the learned Registrar

General of this Court and now in view of our present order, the claimants shall be entitled to withdraw the amount now fixed by us out of the said

deposit in equal share for each for the claimants including mother of the victim from the office of the learned Registrar General and insurance

company shall be at liberty to withdraw the balance amount already deposited in excess of the claim amount now determined by us.

23. In the event, the deposited amount together with accumulated interest thereon is found to be insufficient to satisfy the claim of the claimants, as

per our order as above, then the insurance company shall pay the balance interest amount through an account payee cheque in the name of Renu

Rampuria before learned Claims Tribunal within two months from this order and the learned Tribunal on proper identification of Renu Rampuria by

her learned advocate shall disburse the amount to her. Further, Renu Rampuria shall distribute the interest amount equally among all the claimants

including herself and mother of the victim.

Let the L.C.R. be forwarded forthwith to the learned Tribunal for information and necessary compliance.

Prayer of stay of this order is considered and rejected.

Urgent xerox certified copy of this judgment, if applied for, may be supplied expeditiously after complying with all the legal formalities.

Jyotirmay Bhattacharya, J.

24. I agree.