

Aktari Begum alias Sayada Khatoon Vs The New India Assurance Company Ltd.

Court: Calcutta High Court

Date of Decision: June 16, 2000

Acts Referred: Constitution of India, 1950 " Article 141
Motor Vehicles Act, 1988 " Section 168

Citation: 105 CWN 326

Hon'ble Judges: Satyabrata Sinha, J; Hrishikesh Banerji, J

Bench: Division Bench

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

Judgement

Satyabrata Sinha, J.

This appeal is directed against a judgement and award dated 23.2.2000 passed by Sri K. L. Chakraborti, the learned

Judge, Special Court (E. C. Act) and Additional District Judge, Alipore, South 24 Parganas in M.A.C. Case No. 370 of 1999, whereby and

whereunder the appellant herein was awarded a compensation of a sum of Rs. 2,58,000/-. Mr. Banik, learned Counsel appearing on behalf of the

appellant, has raised a short question in support of the appeal. The learned counsel submitted that from the findings of the learned Tribunal itself it

would appear that although it has been held therein that the victim who at the time of his death was only 20 years and was earning a salary of Rs.

3,000/-, while arriving at the annual income, the learned Tribunal instead and place of Rs. 36,000/- has mentioned 24,000 rupees and out of the

said amount 1/3rd has further been deducted.

2. Mr. Das, learned counsel appearing on behalf of the respondent no. 1, on the other hand, submitted that in view of the decision of the Apex

Court in General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas and Ors. reported in 1994(1) ACJ 1 , the court is

required to take into consideration that only a just amount of the compensation be paid. According to the learned counsel, as the victim was a

bachelor and the appellant being his mother, a sum of Rs. 2,58,000/- by way of compensation must be held to be a just amount, keeping in view

the fact that if the said amount is invested in a fixed deposit, she would be getting a sum of Rs. 25,800/- per annum. The said amount, according to

the learned counsel, would be sufficient for her maintenance. The learned counsel has further drawn our attention to the decisions of the Apex

Court in Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramilaaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai

Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben

Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal

Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and

Others, State of Gujarat and Others and Bachusha Dadusha and Others, and Muljibhai and Another Vs. United India Insurance Co. Ltd. and

Others, and submitted that the learned Tribunal should be asked to follow the Apex Court's decisions while disbursing the amount of

compensation. According to the learned counsel, it appears that the learned Tribunals throughout the State of West Bengal had merely been

directing the insurance companies to pay the amount of compensation to the appellant.

3. Mr. Banik, learned counsel, on the other hand has relied upon various decisions to show that the directions have been issued to pay the amount,

namely, K. Murugesh and Ors. vs. M. Palappa and Ors., reported in 1999(3) TAC 528, M. D. Thiruvalluvar Transport Corporation vs.

Santhalakshmi reported in 1999(3) TAC 537 and Swatantra Kumar vs. Qamar Ali and Ors., reported in 1999(1) TAC 413.

4. So far as the merit of the matter is concerned, the only question which arises for consideration is as to whether the learned Tribunal erred in

computing the annual income of the victim at Rs. 24,000/-.

5. The learned Tribunal having regard to the computing of the periods framed the following issues:

1. Is the case maintainable in its present form?

2. Did the accident occur due to the rash and negligent driving by the driver of the vehicle bearing no. WB-19/2405 (Private bus)?

3. Was the victim dead due to the accident as alleged?

4. Is the petitioner/claimant entitled to get compensation as prayed for?

6. Before the learned Tribunal, several witnesses were examined and several documents were filed including documents to show the monthly

income of the victim. Having regard to the evidences on record, the learned Tribunal held, Therefore on a careful consideration of all the

documents on record along with oral depositions of the P.W. 1 and 2, I am inclined to hold that on 9.7.99 an accident was caused by the

offending vehicle at which the victim was injured who also succumbed to his injuries. The petitioner is the mother of the victim. The victim was a

bachelor at the time of his death. So the petitioner is entitled to get compensation. The victim was 20 years old at the time of his death. The

petitioner is 37 years old now vide ext. 9 so the multiplier will be 16. From Ext. 10 and 11 series it is available that the victim got a monthly

compensation, (2) the victim at the time of his death was 20 years old, (3) the applicant at the time of filing of the application was 37 years old, (4)

a multiplier of 16 should be applied; and (5) from the documents relating to the employment of the victim Ext. 10 and 11 series his monthly salary

at the time of accident was Rs. 3,000/- per month.

7. The learned Tribunal, in our opinion, made an obvious mistake in calculating annual income of the victim at Rs. 24,000/- instead and place of

Rs. 36,000/-. Submission of Mr. Das to the effect that the learned Tribunal might to have done so having found some lacunas on Ext. 10 and 11

cannot be sustained in view of the fact that the learned Tribunal in his finding, as noticed supra, has arrived at a finding that the income of the victim

was Rs. 3000/- per month and thus there was absolutely no reason as to why the annual income was calculated at Rs. 24,000/- instead and place

of 35,000 rupees. The further submission of Mr. Das to the effect that sufficient amount of compensation had been paid to the victim keeping in

view the fact that was widow mother, in our opinion, has no substance.

8. In General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas and Ors., the Apex Court clearly held having taken into

consideration various decisions and authorities that multiplier system in absence of any other cogent reason should be applied on the ground that

the same satisfied on the just compensation theory. In terms of the second schedule appended to the Motor Vehicles Act and the multiplier by

which net amount of dependency to be calculated has been stated. It is true that in U.P. State Road Transport Corporation and Others Vs. Trilok

Chandra and Others, it has been stated, ""We must at once point out that the calculation of compensation and the amount worked out in the

Schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years, and the

multiplier is shown to be Rs. 3000/-. The total should be Rs. 3000/- x 15 = Rs. 45,000/- but the same is worked out at Rs. 60,000/-. Similarly, in

the second item the multiplier is 16 and the annual income is Rs. 9,000/-, the total should have been Rs. 1,44,000/- but is shown to be rs.

1,71,000/-. To put it briefly, the Table abounds in such mistakes. Neither the Tribunals nor the courts can go by the ready reckoner. It can only be

used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the

deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of multiplier.

But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier

cannot exceed 18 years purchase factor. The aforesaid decision itself runs counter to the submission of Mr. Das. The tabular statement which has

been termed as ready reckoner by the Apex Court might contain mistakes as regards the figure stated therein but it was not held that the

multiplicant stated therein is wrong. In fact, the Supreme Court, as noticed hereinbefore, itself stilted that these mistakes are limited to actual

calculation only and not in respect of other items. It is one thing to say that a mistake has been committed by the learned Tribunal which is obvious

on the face of the records and it is another thing to say that the amount of compensation should be upheld although reasons of the learned Tribunal

are wrong. The learned Tribunal, as indicated hereinbefore, has not assigned any reason whatsoever in arriving at a figure of Rs.24.000/- while

computing actual income of the victim. Thus, it does not lie in the mouth of the respondents to contend that the amount of compensation determined

by the learned Tribunal appears to be a just amount within the meaning of Section 168 of the Motor Vehicles Act, 1988.

9. Having regard to the fact that the respondent has not preferred any cross-objection and keeping in view the fact that the learned Tribunal itself

has applied the multiplicant at 16, we are of the opinion, that it is not a case where the respondent should be allowed to contend that the amount of

compensation paid in the facts and circumstances of this case, is just.

10. It further appears that the learned Tribunal has not granted any compensation towards pains and sufferings. In this situation, the amount of

compensation which is payable would be Rs. 3.91.000/- having regard to the following manner:

The victim's salary per annum (Rs. 3000 * 12) = 36,000/-

After deduction of 1/3rd of Rs. 36,000/- = 24,000/-

(Rs. 24.000.* 16) = 3,84,000/-

Funeral Expenses = 2,000/-

Pains and sufferings = 5,000/-

= 3,91,000/-

11. Out of the aforementioned amount, a sum of Rs. 50.000/- has already been paid to the appellant. The net amount which is now payable by

way of compensation would be Rs. 3,41,000/-. The appellant shall be entitled to interest on the remainder, in the event the respondent has not

already deposited the amount, at the rate of 12% per annum from the date of filing of the application till the date of actual payment.

12. However, the second submission of Mr. Das, required consideration. In *Muljibhai and Another Vs. United India Insurance Co. Ltd.* and

Others, A. M. Ahmadi, J. (as the Hon^{ble} Chief Justice of India then was) held:

Having regard to the fact that day in and day out thousands of rupees are paid by way of compensation to various categories of claimants, we think

that before we part, we may indicate a few broad guidelines which the Claims Tribunals may follow while disposing of claim applications arising

under the Motor Vehicles Act, 1939, to scotch complaints of misapplication of compensation money:

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term

fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may however be allowed to

be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required

for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw, etc. to earn a living, the Tribunal may

consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to

be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as

mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is

demand and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and

(iii) above if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other compensations, the

Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so

order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury case if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing

permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance

on the fixed deposit and interest on the amount invested is paid monthly directly to the claimants or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if

the amount awarded is substantial, the Claim Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be

liquidated.

The learned Judge observed that the said guidelines are not exhaustive but are merely illustrative. Yet in General Manager, Kerala State Road

Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Apex Court has followed the aforementioned guidelines issued by

the Gujrat High Court in Muljibhai Ajarambhai Harijan"s case (supra). Keeping in view the fact that the said guidelines has been adopted by the

Supreme Court of India in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., in Lilaben Udesing Gohel, Shyamala Shashidharan

Nayyar and Others, Pramilaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar

Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance

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Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha

Dadusha and Others, the Apex Court held, ""Before we part we must observe that even though the guidelines laid down in Muljibhai and Another

Vs. United India Insurance Co. Ltd. and Others, have been approved and applied by this court in the aforementioned two cases, many Motor

Accident Claims Tribunals and even some of the High Courts in other part of the country do not follow them. We are also told that in claims that

are settled in or outside the court or Tribunal, including Lok Adalats or Lok Nyayalayas, these. guidelines are overlooked. We would like to make

it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or

agreement between the parties, the court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the

amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance

should be granted on the strength of the said FDR without the express permission of the court/Tribunal which ordered the deposit. This will

eliminate the practice of taking loans which may be upto 80 per cent of the amount invested and thereby defeating the very purpose of the order.

We do hope that the courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of

the claim. We are sure that the courts/Tribunal will realise their duty towards the victims of the accident so that a large part of the compensation

amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not

become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from

exploitation by such elements will be equally shared by the courts/Tribunals.

13. It is true that in Swatantra Kumar vs. Qamar Ali and Ors., reported in 1999(1) TAC (SC) 413, the Apex Court directed withdrawal of the

amount of compensation after due verification. It further appears that a learned single Judge of Orissa High Court in D.M. Oriental Insurance Co.

Ltd. vs. Siya Devi and Ors., reported in 1999(3) TAC 529 and a learned single Judge of Madras High Court in M.D. Thiruvalluvar Transport

Corporation vs. Santhalakshmi, reported in 1999(3) TAC 537, directed the insurance company to deposit the amount. Similarly, in Rqjendra vs.

Bishamber Nath, reported in 1999(1) ACJ 799, by an interlocutory order passed in a special leave application a Division Bench of the Supreme

Court permitted the appellant to withdraw the amount upon issuing a direction that the balance amount be deposited within four weeks before the

Tribunal.

14. Mr. Banik has also handed over to us a list of decisions wherein similar directions had been issued, namely, Gurmit Kaur & Anr. vs. State of

Haryana & Ors., reported in 2000 (1) TAC 203 (SC). Sm. Sneha Dutta & Anr. vs. H.R.T.C. & Ors., reported in 2000(1) TAC 1(SC) ,

Ashwani Kumar Mishra Vs. P. Muniam Babu and Others, Kader Kunju and & Anr. vs. Maheswaran Pada Nair & Ors., reported in 2000(1)

TAC 202 (SC) , United India Insurance Co. Ltd. vs. Jagadish Singh, (1999) 9 SCC 56 Bhagirati K.R. Naik (Smt.) & Anr. vs. Oriental Fire &

General Insurance Co. Ltd. & Anr., reported in 1998(2) TAC 377(SC), Shashikalabai vs. State of Maharastra & Anr., reported in (1999)1 ACC

16(SC) , Tasnimtaj and Others Vs. Managing Director, KSRTC and Another, Helen C. Rebello & Ors. vs. M.S.R.T. Company & Anr., reported

in 1998(2) AJR 452, Oriental Insurance Co. Ltd. vs. Indrajit Kaur & Ors., reported in AIR 1998 SC 588, Nagesha vs. M.S. Krishna & Anr.,

reported in 1998(1) TAC 459(SC) , Jamnabai and Others Vs. Deepak Automobiles and Others, Donat Louis Machado & Ors. vs. L Ravindra

& Ors., reported in 2000(1) TAC 208 (SC) , Karnataka State Road Transport Corporation Vs. R. Sethuram and Another, Renu Bala Kalita

(Smt) and Others Vs. Dhiren Chakravarty and Others, and Nanda Kumar Vishnu Sarkar vs. M.S.R.T.C. reported in 2000(1) TAC 204 (SC).

The decisions relied upon by Mr. Banik, in our considered opinion, do not lay down any law. The correctness or otherwise of the decisions of the

Apex Court in *Susamma Thomas (supra)*. *Union Carbide Corporation (Supra)* and *Lilaben (supra)* had neither been considered nor distinguished.

It is now a well settled principle of law that ratio of a decision is its reasons. As in the reported decisions, upon which reliance has been placed

by Mr. Banik, the Apex Court as also other High Courts might have issued directions, the same by itself cannot be said to be law laid down within

the meaning of Article 141 of the Constitution of India. Mr. Banik, however, submits that the Motor Vehicles Act, 1988, does not provide for the

mode and manner of disbursement of the amount of compensation awarded in favour of the applicant. According to the learned counsel, had the

intention of the Parliament been, as has been done in the Workmen's Compensation Act, 1923, the mode and manner of such disbursement could

have been laid down. The Apex Court, in terms of Article 141 of the Constitution of India, may lay down a law. Such a proposition is no longer

res integra. Judge made law, and particularly a law of the land laid down by the Apex Court is equally binding upon the High Courts, other courts

and Tribunals as a legislation is.

15. In that view of the matter, we are of the considered opinion that the High Courts and the Motor Accident Claims Tribunals, while disbursing

the awarded amount of compensation, should, subject to any exceptional case that may be made out, must follow the decisions of the Apex Court

as discussed above. We, therefore, direct the learned Tribunal below to disburse the amount to the victim, having regard to the decisions of the

Apex Court, as discussed hereinbefore.

16. The Registrar General is hereby directed to send copies of this order to all the Motor Accident Claims Tribunals for necessary action. The

Registrar General of this court is also hereby directed to, while disbursing the amount, follow the aforementioned decisions of the Apex Court.

17. This appeal is disposed of with the aforementioned directions.

18. Xerox certified copy of the order be supplied on priority basis.

Hrishikesh Banerji, J.

I agree.