Smt. Saraswati Giri and Another Vs Ratanlal Agarwal and Others

Court: Orissa High Court

Date of Decision: Feb. 12, 1997

Acts Referred: Motor Vehicles Act, 1939 â€" Section 110D

Citation: (1997) 2 ACC 697 : (1997) ACJ 1218 : (1997) 84 CLT 33 : (1997) 1 OLR 302

Hon'ble Judges: P.K. Misra, J

Bench: Single Bench

Advocate: H.S. Mishra, for the Appellant; R.C. Lai, R.N. Naik and R.N. Hota, for the Respondent

Final Decision: Allowed

Judgement

P.K. Misra, J.
The widow and the minor daughter of the deceased are the appellants In this appeal u/s 110-D of the Motor Vehicles Act,

1939, claiming higher compensation.

2. The deceased, Subash Chandra Giri, was serving as a Statistical Inspector, under the District Statistical Officer, Sambalpur. On 3-3-1984,

while the deceased was returning home on a cycle, a truck bearing registration No. ORS 5221 came from, the opposite direction and knocked

him down. While being taken to the hospital he expired on the way. In the claim petition tiled by the widow it was alleged that he was about thirty

years old and was drawing a salary of Rs. 850/- per month. It appears that the court-fee was paid on an amount of Rs. 1,00,000/-. The minor

daughter of the deceased (present appellant No. 2) and the old mother of the deceased were the pro forma opposite parties in the claim case.

The owner (present respondent No. 1) though admitted about the accident in his written statement, claimed that the driver of the truck was not

negligent. According to his case, the accident occurred because the deceased lost his balance and dashed against the rear portion of the truck. The

Insurance Company (present respondent No. 2) not unexpectedly took several technical pleas to resist the claim.

3. The Tribunal awarded a sum of Rs. 42,000/- in all to the widow, minor daughter and the mother on the finding that the accident occurred due to

the negligent driving of the truck driver, in the absence of any independent appeal or cross-objection by the owner of the vehicle or the Insurance

Company, the finding that the accident occurred due to the rash and negligent driving of the truck driver is final. The only question that arises for

consideration, is regarding payability of her compensation as claimed by the appellant.

4. Though the claim application appears to have been valued at Rs1,00,000/-, the appellant; in the appeal claims a sum of Rs. 2,00,000/- and has

accordingly valued the appeal at Rs. 1,52,000/, representing the differential amount as the Tribunal had awarded a sum of Rs. 48,000/-.

The learned counsel for the appellant has placed reliance upon decision of a Division Bench of Bombay High Court reported in Municipal

Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others, and decision of a Single Judge of Rajasthan High Court

reported in Municipal Board, Mount Abu and Another Vs. Harilal, in support of the contention that in fit cases the Claim Tribunal has jurisdiction

to grant higher compensation than the amount actually claimed. Under the provisions of the Act, a Tribunal is required to award just compensation.

The assessment of a just compensation depends upon many imponderables and future contingencies including the possibility of likely increases in

the income of the deceased if ho would not have met with the accident. It may not be therefore possible on the part of the claimant to arrive at a

figure exactly representing the just compensation payable in a case. It is, therefore, inevitable that some amount of lesway is to be given in such

cases. Of course, the amount claimed by the claimant may be considered as an index of the compensation to be awarded, but it cannot be said that

in no cases a Claims Tribunal or for that matter the appellate authority will have no jurisdiction to grant compensation in excess of the figure

indicated by the claimant in the application. While it is not possible to lay down in a strait-jacket formula the instances where the compensation can

be granted in excess of the amount claimed in the claim petition, but generally it can be said that keeping in view the facts and circumstances of a

given case and depending upon the materials at the time of actual disposal of a case, tribunal or the appellate authority can grant compensation in

excess of the amount originally claimed.

5. In the present case, there is no doubt that the deceased was in fact working as a Statistical Inspector under the State Government. Though the

claim petition itself indicates that the deceased was getting a salary of Rs. 850/- including pay and dearness allowance et cetera, PW 2, a co-

employee of the deceased, has categorically stated in his evidence that the present scale of pay of the Statistical Inspector (deposition on March,

1987) was Rs. 780/- to Rs. 1160/-. In other words, though the deceased was drawing a salary of Rs. 275/-, a dearness allowance of Rs. 77/-

end additional dearness allowance of Rs, 317,70 paise in March, 1984. that scale of pay had undergone a chance evidently because of revision of

salary subsequently. If deceased would not have met the untimely death, he would have received higher salary as per the revised scale of pay, in

the scale of pay of Rs, 780/- to Rs, 1160/- along with other admissible dues, such as dearness allowance et cetera. The statement of PW 2 that

the present scale of pay was Rs. 780/- to Rs. 1160/- has not been challenged at all. In fact, judicial notice can be taken of the fact that indeed

there was revision of scale of pay after the unfortunate death of the deceased in March, 1984. The Tribunal had calculated monthly dependency of

Rs."" 360/-which appears to be on the conservative side. Keeping in view the subsequent scale of pay which would have been made applicable to

the deceased had he survived. I consider that if would be reasonable to estimate the monthly dependency at Rs. 600/- per month. As such, the

annual loss of dependency can be calculated at Rs. 6,000/-.

6. In the claim petition it was mentioned that the deceased was aged about 30 years, as per the unchallenged evidence of PW 2, the data of birth

of the deceased as recorded in the Service Book was 1-3-1955. In other words, the deceased was aged about 29 years at the time of accident. If

he would have survived, in normal course he would have retired at the age of 58. In other words, the deceased had about 29 more years of

service. The Tribunal observed that the deceased could have served the Government for about 16 years more, which apparently was an

arithmetical error. Keeping in view the recorded date of birth it would be reasonable to proceed on the footing that the deceased would have

continued in his service for about 29 . years. Keeping in view the number of years left for service and the fact that the principal claimants are the

widow and minor daughter of the deceased, I consider it appropriate to adopt 18 as the suitable multiplier. Calculated on this basis, and taking the

unusual dependency at Rs. 6,000/-, a sum of Rs. 1,68,000/- becomes payable on this score. Though the Tribunal had adopted a multiplier of 16, it

had deducted 1/6th of the amount towards uncertainties of life. If the multiplier theory is adopted, a suitable figure is arrived at after taking into

account the other factors like, uncertainties of life, lump sum payment et cetra and there is no scope for making a further deduction of 1/6th.

Therefore, the Tribunal has definitely committed an error in deducting a further 1 /6th from the calculated amount. Since multiplier of 18 has been

fixed after considering the future uncertainties of life and the payment of lump sum et cetra, there is no necessity to make any further deduction from

that amount of Rs. 1,08,000/-. Besides the aforesaid amount, the widow is also entitled to some amount as consortium. Keeping in view the age of

the deceased and that of the widow, 1 feel a sum of Rs. 12,000/- would represent a fair estimate for the loss of consortium. Accordingly, the total

sum of compensation of Rs. 20,000/- is payable by the Insurance Company.

7. The Tribunal had directed that out of the amount payable, a sum of Rs. 30,000/- was to be paid to the minor daughter, a sum of Rs. 10,000/-

was to be paid to the mother and the balance was to be paid to the widow. Out of the amount payable a sum of Rs. 20,000/-should be paid to the

another, a sum of Rs. 40,000/- should be paid to the widow and balance sum of Rs. 60,000/- should be kept in fixed deposit which would

become payable to the minor daughter on her attaining the majority. The other sums should be paid immediately to the other beneficiaries.

8. The Tribunal had directed for payment of interest at the rate of 10% from the date of application. The said direction is confirmed with respect to

the original award. So, far as the question of interest on the enhanced amount is concerned. I would have ordinarily directed for payment of interest

from the date of filing of the appeal. However. I find that the appeal itself was barred by limitation and it was also not ready for hearing for a

considerable length of time due to non-service of notice on the original respondent No. 3, who is none else than the minor daughter of the original

appellant and ultimately the appeal became ready only after the said respondent No. 3 was transposed as appellant No. 2 and a Vakalatnama was

filed as noticed in order dated 26-11-1990. Instead of directing payment of interest from the date of appeal, I direct that the enhanced amount

shall carry simple interest at the rate of 10% from January, 1991 till the date of payment. However, if the entire amount including the enhanced

amount is not paid within a period of three months from today, the entire amount shall become payable at the rate of 12% interest to be

compounded quarterly.

9. In the result, the appeal is allowed without cost. The appellant is. however, liable to pay court-fee payable before the Tribunal on an additional

sum of Rs. 20,000/-as her claim had been valued at Rs. 1,00,000/-. The aforesaid amount may be paid by the appellant within a period of two

months or may be deducted from the amount now payable to the appellant No. 1.