

Rasmita Biswal & Ors. Vs. Divisional Manager, National Insurance Company Ltd. and Anr.

Civil Appeal No. 7549 of 2021 arising out of S.L.P. (C) No. 23177 of 2018
2021-12-08 | S. Abdul Nazeer, J.
Repository ID: F2J-C-1822

Full judgment text

Rasmita Biswal & Ors. Vs. Divisional Manager, National Insurance Company Ltd. and Anr.

[Civil Appeal No. 7549 of 2021 arising out of S.L.P. (C) No. 23177 of 2018]

S. Abdul Nazeer, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 07.03.2018 passed by the High Court of Orissa at Cuttack in MACA No.965 of 2016 whereby the High Court has reduced the compensation payable to the appellants/claimants from Rs.22,60,000/- to Rs.17,00,000/-.

3. The first appellant is the wife of one Manoj Kumar Biswal and the second and third appellants are their minor sons. Manoj Kumar Biswal died in a motor vehicle accident which occurred on 09.05.2013. The appellants filed claim petition bearing MAC No.46/2013 before the Additional District Judge-cum- Motor Accident Claims Tribunal, Talcher District (for short 'the Tribunal'), seeking compensation on account of the death of Manoj Kumar Biswal. The first respondent, owner of the offending truck, filed his written statement denying any negligence on the part of the driver of the offending truck. Respondent no.2 is the insurer who also filed the written statement opposing the claim petition.

4. The Tribunal, on appreciation of the materials on record, held that the cause for the accident was the rash and negligent driving of the offending truck by its driver. The Tribunal awarded a total compensation of Rs.12,90,064/- along with interest at the rate of 6% per annum. The claimants as well as the insurer challenged the award of the Tribunal before the High Court vide MACA Nos.1134 and 1169 of 2014. The High Court set aside the award and remitted the matter back to the Tribunal for fresh disposal.

The Tribunal once again considered the matter and awarded a total compensation of Rs.22,60,000/-. The insurer challenged the award of the Tribunal before the High Court by filing an appeal bearing MACA No.965 of 2016. In that appeal, the High Court has modified the award of the Tribunal and awarded compensation of Rs.17,00,000/- with interest at the rate of 7.5% per year from the date of claim petition till the date of realization.

5. Learned counsel for the appellant would contend that the High Court was not justified in reducing the compensation without assigning any reason. It is contended that the appellant was earning Rs.15,000/- and was aged about 28 years at the time of his death. The Courts below have taken his age as 33 years and has applied multiplier '16' instead of '15'. It is further argued that the deceased had a permanent job. The Courts below have not awarded any compensation towards loss of future prospects. Even the compensation awarded under the conventional heads is not in accordance with the judgment of this Court in National Insurance Company Limited v. Pranay Sethi and Others¹.

6. On the other hand, learned advocate appearing for the respondent-insurer has supported the judgment of the High Court.

7. We have carefully considered the submissions made at the Bar and perused the materials placed on record.

8. The finding of the Tribunal and that of the High Court with regard to the cause of the accident and the liability of the insurer to pay compensation is not disputed. Therefore, the only question for consideration is whether compensation awarded by the High Court is adequate.

9. The deceased was working as supervisor under one Kusha Samal (PW-3), proprietor of M/s. Divine Construction. Exhibit P-8 is certificate issued by PW- 3 shows that the deceased was a supervisor in the organisation and his salary was Rs.15,000/- per month. In his evidence, PW-3 has also stated that the

deceased was paid salary of Rs.15,000/- per month. The first appellant-wife of the deceased was examined as PW-1. She has stated that the income of the deceased at the time of his death was Rs.15,000/- per month. Taking into account the evidence on record, the Tribunal has assessed his income at Rs.15,000/-. We do not find any error with the assessment of the salary as such by the Tribunal.

10. Though the appellants claim that the deceased was aged 28 years at the of his death, no documents have been produced in support of the said contention. On the contrary, PAN card (Exhibit-7) of the deceased shows that he was aged 33 years at the time of his death. Even the post-mortem report of the deceased suggests the same. Therefore, the Tribunal held that the deceased was aged 33 years and multiplier '16' was applied. After deducting of the income towards the personal expenses of the deceased, the Tribunal awarded a total compensation of Rs.21,60,000/- towards loss of dependency and a sum of Rs.1,00,000/- under other conventional heads. Thus, a total sum of Rs.22,60,000/- was awarded by the Tribunal.

11. However, the High Court, without assigning any reason whatsoever, has modified the award of the Tribunal and has awarded a compensation of Rs.17,00,000/- by holding as under: "Considering the submissions made and keeping in view the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served, if the awarded compensation amount of Rs.22,60,000/- is modified and reduced to Rs.17,00,000/- (Rupees Seventeen Lakhs) only, which is payable to the claimants along with the awarded interest. The impugned award is modified to the said extent."

12. Section 173 of the Motor Vehicles Act, 1988 provides for filing of an appeal against the award passed by the Claims Tribunal. It is settled law that an appeal is continuation of the proceedings of the original Court/Tribunal. An appeal is a valuable right of the appellant and at the stage of an appeal, all questions of fact and law decided by the Tribunal are open for the reconsideration. Therefore, the appellate court is required to address all the questions before it and decide the case by giving reasons.

13. We have already held that the monthly income of the deceased, as assessed by the Tribunal at the rate of Rs.15,000/- per month, is just and proper. It is also established that the deceased was 33 years at the time of his death. Therefore, application of multiplier of '16' by the Tribunal is also proper. The annual salary of the deceased comes to Rs.1,80,000/- which has to be multiplied by '16' which becomes Rs.28,80,000/-.

14. In *Pranay Sethi 1*, the Constitution Bench of this Court has held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be awarded where the deceased was below the age of 40 years: "In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

15. 40% of the income of the deceased, therefore, has to be added towards loss of future prospects which comes to Rs.11,52,000/-. Thus, the total income of the deceased is Rs.40,32,000/-. One-fourth of the income i.e. 10,08,000/- has to be deducted towards the personal expenses of the deceased, as he has left behind three dependants. Therefore, the total amount payable to the claimants towards loss of dependency comes to Rs.30,24,000/-.

16. In *Pranay Sethi 1*, this Court has awarded a total sum of Rs.70,000/- under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. The said Judgment of the Constitution Bench was pronounced in the year 2017. Therefore, the claimants are entitled to 10% enhancement. Rs.16,500/- is awarded towards loss of estate and conventional expenses and Rs.44,000/- is awarded towards spousal consortium. Thus, the total compensation payable to the claimants is as under:

(1)

Towards loss of dependency

Rs.30,24,000/-

(2)

Towards loss of estate

Rs.16,500/-

(3)

Funeral expenses

Rs.16,500/-

(4)

Spousal consortium

Rs.44,000/-

Rs.31,01,000/-

17. As noticed above, the High Court has already awarded a sum of Rs.17,00,000/-. Thus, the balance sum payable to the appellants is Rs.14,01,000/-. The second respondent-Insurer is directed to deposit a sum of Rs.14,01,000/- before the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within eight weeks from today. On such deposit being made, the same shall be disbursed to the claimants/appellants in the same proportion as directed by the Tribunal in Award dated 27.02.2016.

18. The appeal is accordingly disposed of. There shall be no order as to costs.

19. Before parting with the judgment, we may notice that a large number of claim petitions, under the provisions of the Motor Vehicles Act, 1988 are being filed before the various Claims Tribunals established thereunder throughout the country. Against the awards of the Tribunals, appeals are filed under Section 173 of the Motor Vehicles Act, 1988 before the relevant High Court, either by the claimants or by the insurers and owners of the offending vehicles. Large number of such appeals are pending before the various High Courts.

Having regard to the above, we are of the view that in order to curtail the pendency before the High Courts and for speedy disposal of the appeals concerning payment of compensation to the victims of road accident, it would be just and proper to consider constituting 'Motor Vehicle Appellate Tribunals' by amending Section 173 of the Motor Vehicles Act so that the appeals challenging the award of a Tribunal could be filed before the Appellate Tribunal so constituted.

20. The various Benches of such an Appellate Tribunal could consist of two Senior District Judges. To ensure access to justice and to avoid pendency, it is also proper to consider setting up Benches of the Appellate Tribunal in various regional cities, in addition to the capital city of each State as may be indicated by the relevant High Court. For this purpose, appropriate rules governing the procedure of the Appellate Tribunal may also be framed.

No further appeal against the order of the Appellate Tribunal need be provided. If any of the party is aggrieved by the order of the Appellate Tribunal, he can always invoke the writ jurisdiction of the concerned High Court for appropriate reliefs. Department of Justice, Ministry of Law and Justice, is requested to examine this matter.

21. The Registry is directed to send a copy of this Judgement to the Secretary, Department of Justice, Ministry of Law and Justice, forthwith.

1 (2017) 16 SCC 680

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.