

Smt. Sangita Arya & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.

Civil Appeal No. 2612 of 2020 arising out of SLP (Civil) No. 28724 of 2018
2020-01-01 | Indu Malhotra, J.
Repository ID: F2J-C-1841

Full judgment text

Smt. Sangita Arya & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.

[Civil Appeal No. 2612 of 2020 arising out of SLP (Civil) No. 28724 of 2018]

Indu Malhotra, J.

Leave granted.

1. The present civil appeal has been filed by the Claimants/Dependents of one Harish Singh Arya, who died at the age of 35 years in a motor vehicle accident on 18.06.2007.

2. On 18.06.2007, the deceased Harish Singh Arya had taken his uncle Govind Lal Arya, an Enforcement Officer for Passenger Tax, Champawat for inspection in his taxi. The taxi had stopped on the side of the road at Village Chandini near Tanakpur - Khatema Road, Uttarakhand.

The deceased had gone to answer nature's call on the side of the road, when at about 2:30 p.m., one Tata Sumo bearing No. UP02D5208, being driven at a high speed from the wrong side of the road, hit the deceased, and seriously injured him. The Enforcement Team was able to stop the offending vehicle, however the driver of the vehicle fled from the spot. While Harish Singh Arya was being taken to Bareilly for hospitalization, he succumbed to his injuries. The F.I.R. of the accident was lodged by Mr. Govind Lal Arya, the uncle of the deceased, at P.S. Banbasa.

3. The Claimants filed a Claim Petition before the Motor Accident Claims Tribunal, Haldwani - Court of First Fast Track, Additional District Judge, Haldwani, District Nainital (MACT) being Compensation Claim No. 158 of 2007 for compensation on behalf of five dependents i.e. the widow, two minor daughters, and the parents of the deceased. The Claimants submitted that the deceased owned two taxis from which he earned approximately Rs. 1,00,000 p.a. after deduction of all expenses.

The road accident was proved by the oral testimony of the eyewitness Shri Govind Lal Arya (PW2), who was accompanying the deceased, and had lodged the F.I.R. With respect to payment of compensation, the Claimants submitted that the deceased owned two taxis, which generated an income of Rs. 1,00,000 p.a. The R.T.O., Motor Vehicles Department, Haldwani produced certificates of both the vehicles bearing No. UP02D5111 and UP04D0111 before the MACT, which showed that the vehicles were purchased by the deceased Harish Singh Arya, and were registered in his name.

The Claimants filed four Income Tax Returns (ITRs) of the deceased for the years 200203, 200304, 200405, and 200607. The ITR for the year 200607 was Rs. 98,500 p.a. A photocopy of the ITR bearing the stamp of receipt from the Income Tax Department, was placed on record.

4. The MACT vide Award dated 22.12.2009 held that on the date of the accident, the deceased was 35 years of age, and his income was Rs. 1,00,000 p.a. The deceased had left behind five dependents i.e. his wife, parents and two minor daughters. The MACT deducted 1/4th of his income towards personal expenses, and adopted the multiplier of 16. Accordingly, the loss of dependency was computed at Rs. 12,20,000.

The MACT further awarded Rs. 20,000 to the widow towards loss of consortium, Rs. 10,000 to the minor daughters towards loss of love and affection, and Rs. 5,000 towards funeral expenses. The total compensation awarded to the Claimants worked out to Rs. 12,55,000 with Interest @6% p.a. The Respondent No. 1 - Insurance Company was held liable for payment of compensation to the Claimants.

5. Aggrieved by the aforesaid Award, the Insurance Company filed Appeal from Order No. 117 of 2010 before the High Court of Uttarakhand at Nainital. The learned Single Judge of the High Court vide the impugned judgment dated 22.07.2016 erroneously assumed that the deceased was a Government servant, and observed that he was running a parallel business by plying taxis.

There is no basis for finding that the deceased was a Government employee. We do not know as to on what basis the learned Single Judge has arrived at this factually incorrect conclusion, and made it the basis for awarding compensation. The High Court further held that the ITRs for the years 200203, 200304 and 200405 showed that the average income of the deceased for these three years was Rs. 52,635 p.a.

The ITR for the year 200607 revealed an income of Rs. 98,500 p.a., which was almost double the income of the preceding three years. The High Court held that the ITR for the year 200607 could not be taken into consideration. The learned Single Judge further held that the income which may have been generated from the two taxis, could not be taken into consideration for determining the income of the deceased.

Accordingly, the High Court took the average of the ITRs for years 200203, 200304 and 200405, for determining the income of the deceased at Rs. 52,635 p.a. The Court deducted 1/3rd of the income towards personal expenses, and applied the multiplier of 16. The loss of dependency was assessed at Rs. 5,61,440.

The consortium payable to the widow was reduced by the High Court from Rs. 20,000 (as awarded by the MACT) to Rs. 10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs. 10,000 to Rs. 5,000. However, the amount of Rs. 5,000 awarded by the MACT towards funeral expenses was maintained. The total compensation awarded to the Claimants was reduced from Rs. 12,55,000 to Rs. 5,81,440.

6. Aggrieved by the impugned judgment dated 22.07.2016 passed by the High Court, the Claimants have filed the present civil appeal. This Court while issuing notice to the Respondents on 23.10.2018, recorded the submission made on behalf of the Claimants that the deceased was not a Government employee.

7. We have heard the learned counsel for the parties and perused the material on record. We find that the impugned order passed by the High Court bristles with serious factual inaccuracies:- first, the learned Single Judge wrongly assumed that the deceased Harish Singh Arya was a Government employee. This has nowhere been averred by the Claimants in any of their pleadings. The entire basis of the judgment is hence misconceived.

On the basis of the aforesaid erroneous assumption, the High Court has erroneously observed that the deceased was running a parallel business by plying two taxis, and held that the income derived from the same could not be taken into consideration for assessing the compensation. These findings being based on a completely erroneous assumption, are liable to be set aside. Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 200203 at Rs. 54,000 p.a., 200304 at Rs. 52,405 p.a., and 200405 at Rs. 51,500 p.a.

The learned Single Judge disregarded the ITR for the year 200607, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect. A photocopy of the original ITR for the year 200607 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20.04.2007, which is prior to the death of the deceased which occurred on 18.06.2007.

Hence, the High Court was not justified in disregarding the ITR for the year 200607 while assessing the income of the deceased. The Appellants have also placed on record a copy of the ITR for the year 200506, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs. 98,100 p.a. during the previous assessment year. As a consequence, the impugned judgment dated 22.07.2016 passed by the High Court is hereby set aside.

8. On a perusal of the documentary evidence on record i.e. the ITRs for the assessment years 200506 and 200607, filed prior to the death of the deceased, which reflect the income of approximately Rs. 1,00,000 p.a. (as assessed by the MACT in its Award dated 22.12.2009), we make this the basis for computing the compensation payable to the Claimants.

We find that the Courts below have not awarded any amount towards future prospects, as mandated by the judgment of the Constitution Bench in *National Insurance Company Limited v. Pranay Sethi & Ors.*¹ Accordingly, we award future prospects @40% of the income of the deceased. Given the fact that the deceased left behind five dependents, the deduction towards his personal expenses would be 1/4th as per the judgment of this Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*²

The multiplier adopted by the MACT and the High Court at 16 is appropriate. With respect to payment of compensation under the conventional heads, we direct that same be awarded in consonance with the

judgment in Pranay Sethi (supra). Accordingly, the compensation payable to the Claimants/Appellants herein is determined as :

9. Even though the Claimants/Appellants herein did not file an Appeal against the Award dated 22.12.2009 passed by the MACT before the High Court, we deem it appropriate to enhance the compensation by exercising our jurisdiction under Article 142 of the Constitution of India in order to do complete justice between the parties.

10. The Respondent - Insurance Company is directed to pay the compensation awarded to the Appellants within a period of twelve weeks' from the date of this judgment, after adjusting any amount which may have been paid. The amount payable to the Appellants shall carry Interest @ 7.5% p.a. from the date of filing the claim petition till the date of realization.

11. The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of. Ordered accordingly.

1 (2017) 16 SCC 680.

2 (2009) 6 SCC 121.

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.