Babu and anr. Vs. Progressive Engineering Construction Ltd. and ors.

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Court : Madhya Pradesh

Decided On : Sep-13-2005

Reported in : 2006ACJ1107

Judge : U.C. Maheshwari, J.

Acts : Motor Vehicles Act, 1988 - Sections 158(6), 163A, 166, 166(1), 166(4) and 168; Indian Penal Code (IPC) - Sections 304A; Motor Vehicles Act, 1939 - Sections 110B; Code of Civil Procedure (CPC) - Order 1, Rule 10A

Appeal No. : M.A. No. 374 of 1987

Appellant : Babu and anr.

Respondent : Progressive Engineering Construction Ltd. and ors.

Advocate for Def. : Divesh Jain, Adv.

Advocate for Pet/Ap. : Abha Pandey, Adv.;Ashish Shroti, Adv.

Judgement :

U.C. Maheshwari, J.

1. Being aggrieved by the award dated 9.9.1987 passed by Additional Motor Accidents Claims Tribunal, Jabalpur in A.M.V. Case No. 78 of 1982, appellant-claimant has preferred this appeal for enhancement of the awarded sum.

2. The factual matrix of the case is that on intervening night of 11/12.2.1982 Ram Sunder the son of appellants aged about 19 years was going on bicycle with his friend Mangal Kumar, on the way he was dashed by truck bearing registration No. CPK 4012 driven by Dhanbahadur Singh, respondent No. 2, in a rash and negligent manner. Resultantly Ram Sunder sustained serious injuries, was taken to the Medical College, Jabalpur where he succumbed to injuries on 12.2.1982. The incident was reported to police and by holding investigation respondent No. 2 was charge-sheeted under Section 304A of Indian Penal Code. The truck was owned by the respondent No. 1 while the same was insured with respondent No. 3. As per averments of the claim, the deceased was working in Madhya Pradesh Electricity Board and earning Rs. 300 per month. The claim was preferred for Rs. 1,20,000.

3. In reply, respondent Nos. 1 and 2 have denied the averments made by the appellants. Deceased was not the earning member of the family. The false criminal case has been initiated against respondent No. 2 and prayed for dismissal of the same.

4. In reply, insurer, respondent No. 3, denied the material facts of the claim and contended that liability of insurer is limited up to Rs. 50,000 as per terms and conditions of the policy. In any case, if liability is saddled against this respondent then it could not be more than aforesaid limit.

5. In view of the aforesaid pleadings of the parties issues were framed by the Tribunal. After recording the evidence at the stage of appreciation it was held that Ram Sunder died because of rash and negligent driving of respondent No. 2. The income of the deceased was found as Rs. 300 per month and awarded Rs. 21,000 along with interest at the rate of 6 per cent per annum from the date of filing claim application. Hence, this appeal is preferred for further enhancement of the awarded sum at the instance of the claimants-appellants.

6. Ms. Abha Pandey, learned counsel for the appellants has submitted that the incident took place long back in the year 1982 when old Motor Vehicles Act, 1939, was in force. So the liability of insurer was limited up to Rs. 50,000 but in any case the Tribunal was bound to assess just and proper compensation as per Section

110-B of old Motor Vehicles Act by considering the overall circumstances of the dependants/parents of the deceased. According to her submission Ram Sunder died at the age of 19 years, admittedly he was working as a helper in Madhya Pradesh Electricity Board and getting round about Rs. 300 per month as salary. But there were future prospects of the deceased like promotions, increment and revision of salary. As his services were governed by statutory provisions he was permanent employee of Madhya Pradesh Electricity Board.

7. Subsequent to death of Ram Sunder many times salary of the employees of M.P.E.B. has been enhanced and appellants would have got benefit of it but due to untimely demise of their only son, the breadwinner of the family they have been deprived from this future dependency also. Thus in any case the future prospects of the deceased should have been considered by Tribunal for awarding the just, proper and adequate compensation. In routine the compensation is always assessed on the basis of the date of accident but in peculiar case like case at hand in which parents have been left by deceased requires some additional consideration. She further submitted that the loss of dependency may be assessed not only on the basis of the then salary of the deceased at the rate of Rs. 300 per month but by keeping in view his future prospects also. Her further submission was that as per provisions of Second Schedule and Section 163A of Motor Vehicles Act, 1988, the assessment of loss of dependency in respect of non-earning deceased person could be carried out on presuming his notional income at Rs. 15,000 per year. The same principle may be considered to award just and proper compensation to the appellants. It was also said that under the old Act the future prospects of the deceased could have been considered. Thus adequate compensation be awarded by keeping in view the subsequent revision of pay scales in M.P.E.B. which deceased would have got had he been alive and also high price index of the domestic things for livelihood.

8. While on the other hand, Mr. Divesh Jain, learned counsel for the respondent insurer has submitted that the award passed by the Tribunal is just and proper, it does not require any interference at this stage and prayed for dismissal of the appeal.

9. Thus this Court has to decide that in which manner just and proper compensation could be assessed. Thus this Court deemed fit to take assistance of other lawyer who is not the counsel in this matter for either of the parties. Thus by virtue of the provisions under Order 1, Rule 10-A of the Civil Procedure Code, court has requested Mr. Ashish Shroti, Advocate, who is a practising lawyer of this Court and also conducting the case of such nature to address on aforesaid question.

10. He submitted that Section 168 of Motor Vehicles Act, 1988 and provisions of Section 110-B of the Motor Vehicles Act, 1939, are the same which speak the analogy of awarding just compensation. As per provision of the new Act the just compensation in respect of non-earning deceased person could be assessed on the basis of Rs. 15,000 per year as notional income. Behind this the intention of the legislature is only that the loss of dependency should be assessed on the basis of assuming minimum income as Rs. 15,000 per annum not less than it.

11. He also submitted that the future prospects could also be considered as the salary of the deceased could have been revised and enhanced from time to time and appellants-claimants could have been benefited by it but due to death of the son they have been deprived from it.

12. His further submission was that the strict rules of pleadings and evidence are not applicable in the claim matter. The Claims Tribunal and courts are having authority to award just compensation, it may be more in the circumstances even when the claimant has prayed for less compensation. In support of this contention he also cited some decided cases.

13. In view of the aforesaid submissions this Court has to consider the following questions:

(a) Whether future prospects and career of the deceased could be considered in the circumstances?

(b) Whether the intention of the legislature is that the assessment of loss of dependency should be carried out minimum on the basis of notional income Rs.

15,000 per year? If it is in affirmative then whether assessment in the case at hand could be carried out in view of the said intention of the legislature?

(c) Whether the claimants could be awarded compensation more than the amount prayed by them?

14. So far as the first question (a) is concerned the deceased was working as helper in M.P.E.B. on salary of Rs. 300 per month. There is no dispute that M.P.E.B. is corporate body of the State Government and services of its employees are governed by statutory provisions. So it could not be denied that there was future prospects of the deceased in near future had he been alive he would have got some promotion along with/or enhancement of salary also. All these aspects have not been considered by Tribunal. Although all these facts have not been pleaded by appellants-claimants but as per cause title of the appeal, it appears that the appellants are illiterate rustic villagers and for want of proper advice the claim was not properly drafted. It does not mean that by applying the strict rules of pleadings or the provisions of Evidence Act, dependent persons like the appellants could be deprived from the benefit of the law enacted for the social welfare or justice. Thus, the circumstances subsequent to accident that different revisions in pay scales and enhancement in the salary of the employees of M.P.E.B. in last 23 years and the enhancement of price index in domestic things could be considered to award just compensation to old age appellants.

15. My aforesaid view is fully supported by the principle laid down by the Full Bench of Orissa High Court in the matter of Orissa Road Trans. Co. Ltd. v. R.K. Das : AIR1990 Ori74 , in which held as under:

(21) Next ground for assailing the correctness of the decision in Umakanta Singh's case 1987 ACJ 133 (Orissa), is that it has not taken into consideration the decision reported in Sabita Pali v. Rameshwar Singh 1973 ACJ 319 (Orissa). In the said decision, future prospects of promotion in the employment were taken into consideration. Such a question was not the subject-matter of consideration in Umakanta Singh's case, 1987 ACJ 133 (Orissa). Whether future prospects of promotion of the deceased would be taken into consideration would depend on the eligibility and suitability for promotion, the availability of posts to which the

employee can be promoted to during his full term of employment. Death of an employee does not make him eligible and suitable and a post is not created for his promotion if there is none. Uncertainties by death or otherwise or the loss of employment are also to be considered. All these would depend upon materials available on record. No hard and fast rule can be laid down that the deceased employed in a service which has the opportunities of promotion is to be promoted definitely or in all probabilities. Events which are almost certain to happen in future can be taken into consideration, if materials are available on record, to determine the annual loss so that the lump sum compensation which appears to be just can be determined. Decision rendered in Umakanta Singh's case 1987 ACJ 133 (Orissa), accordingly, cannot be assailed to be wrong for non-consideration of earlier decision of the Division Bench in Sabita Pati's case 1973 ACJ 319 (Orissa).

Thus in the available circumstances in the case at hand by keeping in view that there is a regular cadre of promotions in M.P.E.B. and chance of enhancement of salaries it is held that the future prospects of the deceased could be considered for assessment of the dependency.

16. So far as the question (b) is concerned it is not in dispute that as per Second Schedule to the Motor Vehicles Act, 1988 the minimum income as notional income of Rs. 15,000 per year is prescribed for non-earning deceased person in vehicular accident. Although the new enactment has not been enforced by giving retrospective effect but one thing is certain that in both enactments the analogy of just compensation have been prescribed. The court cannot ignore this position that the present appeal is going to be decided after 23 years from the date of incident. The old parents of the deceased are waiting under expectation that the court will award them the just compensation. In former paras of the order it has been held that future prospects of the deceased could also be considered. Thus in view of the future prospects and career of the deceased the appellants are entitled for the award of just compensation. I have not found any other method to assess it except the method provided under the said Second Schedule and as per this Schedule the intention of the legislature is very clear that the assessment be made on the basis of Rs. 15,000 per year even for non-earning person. In fact it is also the requirement of law to decide the just compensation. When the assessment of the

non-earning person could be based on the basis of Rs. 15,000 per year then why it could not be applied to the case at hand by considering the salary and its probable future enhancement and also by keeping in view the aspect of future promotion which deceased could have got. Thus it is held that in view of the intention of the legislature appellants' claim would be assessed on the basis of the notional income, i.e., Rs. 15,000 per year.

17. So far as question (c) is concerned, in view of the aforesaid it is apparent that the appellants are illiterate rustic villagers and due to this inadvertence the claim was not properly initiated but in any circumstances the court or Claims Tribunal to award the just compensation may award more than that which has been prayed in claim petition. My aforesaid view is fully supported by the precedent of Apex Court in the matter of Nagappa v. Gurudayal Singh : AIR 2003 SC674 , in which it was held as under (paras 7, 10):

(7) Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act'), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is--it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to Sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said section is Sub-section (4) which provides that 'the Claims Tribunal shall treat any report of accidents forwarded to it

under Sub-section (6) of Section 158 as an application for compensation under this Act'. Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

(10) Thereafter, Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.

18. This question was also answered by the Division Bench of this Court in the matter of Vijay Kumar Arya v. Ashok Rathore , in which it was held as under:

(5) The claimant has claimed compensation of Rs. 1,42,550. In our opinion, in the circumstances narrated above, the claimant's claim is on the lower side. Therefore, we award compensation of Rs. 1,50,000 (rupees one lakh fifty thousand) payable with interest at the rate of 9 per cent on the enhanced amount of compensation from the date of application till payment. Joint and several liabilities of owner and driver of the vehicle, payable by Oriental Insurance Co. Ltd., Betul with which the vehicle was insured.

19. It was again decided by the other Division Bench of this Court in the matter of New India Assurance Co. Ltd. v. Hari Kishan , which says as under:

(3) Thus, there is no ambiguity that to meet the ends of justice, so also to arrive at the 'just' compensation, the court is empowered to award an amount exceeding the amount claimed.

20. Therefore, in view of the aforesaid discussion, I proceed to assess the loss of dependency of the appellants on deceased by taking his income at Rs. 15,000 per annum. Then, firstly, 1/3rd amount is to be deducted for self expenditure of deceased which he would have spent on himself had he been alive, then the loss of dependency comes to Rs. 10,000 per annum and in this case on the date of incident the father and mother of the deceased were aged about 50 and 45 years respectively. Thus looking to the age of mother, I deem it fit to apply the multiplier

of 15. On applying this multiplier total loss of dependency comes to (Rs. 10,000 x 15) = Rs. 1,50,000 the same is awarded to the appellants. In addition to it the appellants are also awarded Rs. 2,000 for funeral expenses, Rs. 2,500 for loss to estate and Rs. 5,000 for expectancy of life.

21. In view of aforesaid, by modifying the award of the Tribunal, appellants are awarded total compensation Rs. (1,50,000 + 2,000 + 2,500 + 5,000) = Rs. 1,59,500 (Rs. one lakh fifty-nine thousand and five hundred). The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of filing of claim application. Out of this total compensation Rs. 50,000 and its interest would be payable by the respondent Nos. 1, 2 and 3 jointly and severally and remaining amount along with its interest would also be payable by respondent Nos. 1 and 2, but insurer, respondent No. 3, would also be bound to indemnify the remaining amount but with a right to recover it from the owner of the vehicle, respondent No. 1. This direction is also fortified by the dictum of Apex Court in the matter of Pramod Kumar Agrawal v. Mushtari Begum 2004 ACJ 1903 (SC).

22. Appeal is allowed in part. There shall be no order as to costs.