

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION

v.

LALNIPUII

DECEMBER 14, 2006

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Motor Vehicles Act, 1988:

Section 166—Multiplier—Adoption of—Determining factor—When claimants are parents of deceased, age of deceased is not relevant and it is the age of claimants which would determine the multiplier to be adopted.

Section 166—Loss of dependency—For claiming compensation, claimants are required to show that they were dependent on the deceased—On facts, deceased was not staying with her parents—Fact that she was contributing to household expenses is not substantiated—Hence, taking into account age of parents, monthly income of deceased and other factors like loss of love and affection, mental shock, award of Rs.5 lacs appropriate—Interest rate of 15% awarded by Tribunal is also on higher side and is reduced to 7.5%

The deceased lost her life in accident. She was traveling in a bus owned by appellant-Corporation. At the time of accident, she was 31 years old and drawing monthly salary of Rs. 6500/-. Her pay was revised as per Fifth Pay Commission and on that basis her total emoluments came to Rs.9340/-. Her mother filed a claim before MACT for Rs. 15 lacs. MACT passed an award of compensation of Rs. 12 lacs. Aggrieved appellant filed the present appeal.

Disposing of the appeal, the Court

HELD: 1.1. Father of the deceased was not the claimant and it was only the mother. There was no material adduced before the Tribunal to show any dependency on the income of the deceased. The multiplier of 17 appears to have been taken on the basis of the age of the deceased. The interest rate of 15% fixed is also on the higher side. [1091-B]

1.2. While parents are the claimants, the age of the deceased is not

A relevant and it is the age of the claimants which would determine the multiplier to be adopted. On that score it is clear that the Tribunal's assessment of the quantum of Award was incorrect. [1091-C]

Jyoti Kaul and Ors. v. State of M.P. and Anr., [2002] 6 SCC 306; *National Insurance Co. Ltd. v. M/s. Swarnlata Das and Ors.*, [1993] Supp 2 SCC 743 and *C.K. Subramania Iyer and Ors. v. T. Kunhikuttan Nair and Six Ors.*, [1969] 3 SCC 64, relied on.

C 1.3. Deceased was the only daughter of her parents and was not staying with her parents and there is no material to show that she was contributing to the household expenses. Taking into account the age of the claimant and the monthly income as noticed by the Tribunal, a total sum of Rs. 5,00,000/- shall be payable by the appellant to the respondent as Award. This quantum is fixed taking into account the age of the claimant, income of the deceased and other relevant factors like loss of love and affection, mental shock etc. Interest is fixed at the rate of 7.5% **D** from the date of claim till payment. [1091-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5823 of 2006.

From the Final Judgment and Order dated 18.2.2002 of the Gauhati (Assam : Nagaland : Meghalaya : Manipur : Tripura : Mizoram and Arunachal Pradesh) Aizwal Bench at Aizwal in M.A.C. App No. 3 of 1999.

R.S. Hegde, Chandra Prakash, Rahul Tyagi, Savitri Pandey, P.P. Singh for the Appellant.

K.N. Madhusoodhanan and R. Sathish for the Respondent.

F The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. Leave granted.

G Challenge in these appeals is to the order passed by a Division Bench of the Guwahati High Court, Aizwal Bench at Aizwal. By the order dated 18.2.2002, the appeal filed by the appellant was dismissed for default after hearing learned counsel for the respondent. Applications filed for restoration of the appeal after condonation of delay in presentation of the same also stood dismissed. Though the orders challenged in the appeals related to restoration of the appeal dismissed for default, it was felt that no useful **H** purpose would be served by remitting the matter back to High Court for

consideration on merits. The main ground taken by the appellant before the High Court was that it had no notice of the transfer of the case from the Guwahati Bench to the Aizwal Bench and therefore, there was no appearance. This plea was turned down by the High Court on the ground that sufficient notice was given to the appellant. Considering the long passage of time and, as agreed to by learned counsel for the parties, the appeals are taken up for disposal on merits of the facts involved.

Background facts in a nutshell are as follows:

One Zoremsangi, who was member of the Indian Information Service under the Central Government and working under the Ministry of Information and Broadcasting, Government of India lost her life in a road accident on 8.7.1997. She was travelling from Mumbai to Pune by a bus belonging to the appellant-Maharashtra State Road Transport Corporation (hereinafter referred to as the 'Corporation'). A Claim Petition was filed by her mother who is respondent herein. In the Claim Petition it was stated that she was aged about 31 years and 2 months at the time of accident and was drawing monthly salary of Rs.6,500/-. Her pay was revised as per the recommendation of the Fifth Pay Commission and the scale of pay was Rs. 8,000-275-13,500/- and on that basis her total emoluments would be Rs. 9,340/- with effect from 1.1.1996 i.e. effective date fixed by the Fifth Pay Commission. The claimant made a claim of Rs.15,00,000/-. Pursuant to the notice the appellant entered appearance and took the preliminary stand that the application was not maintainable and there was no cause of action. On the basis of the pleadings several issues were framed.

Motor Accidents Claims Tribunal, Aizwal (in short the 'Tribunal') considering the material on record awarded compensation of Rs. 12,00,000/- and granted interest at the rate of 15% from the date of judgment till realization. This sum of Rs.12,00,000/- was fixed on the following basis:

1. Income of the deceased = Rs.1,12,080/-
per annum Rs.9,340 x 12
2. According to the Schedule
Rs.40,000/- annual income Total
Compensation is Fixed at Rs.6,40,000/-
Therefore Rs. (6,40,000 x 112.080) 40,000 = Rs.17,93, 280/-
3. Deducting one third expenses if she

A still alive as per note under the
Schedule. (-) = Rs. 5,97,760/-
Rs. 11,95,520/-

B 4. Funeral Expenses. = + Rs. 2,000/-

5. Loss of estate. = + Rs.2,500/-6.

6. Total compensation due to the
claimant is = Rs.12,00,020/-

C One month time was granted to satisfy the Award.

The appellant filed an appeal which was originally heard by the Guwahati Bench, and was subsequently transferred to the Aizwal Bench. The Award was questioned by the appellant before the Guwahati Bench where the same was registered but the same was transferred to the Aizwal Bench. As noted above, taking into account the non-appearance of the counsel at the time of hearing, the application was dismissed. The applications for restoration and for condonation of delay in filing the said application were dismissed. Therefore, these appeals are filed.

E Learned counsel for the appellant has submitted that the High Court ought to have noticed that the case was transferred from the Guwahati Bench to the Aizwal Bench and therefore, there was no appearance on the date fixed. The High Court should not have summarily dismissed the appeal particularly when it was noted in the order that the learned counsel for the respondent was heard. High Court did not take note of the fact that the claimant was the mother, who is the wife of the Chief Secretary of the State. There was no averment in the Claim Petition that the respondent was dependant on the deceased. On the contrary, she being the wife of the Chief Secretary by no stretch of imagination be treated as having any dependency on the income of the deceased. A multiplier of 17 applied is clearly was on higher side.

G Learned counsel for the respondent on the other hand submitted that no plausible reason was shown to the High Court for the non-appearance on the date fixed and therefore, belated applications for restoration and condonation of delay for presentation of the application were rightly rejected. So far as the plea of dependency is concerned, it is stated that this aspect was not raised

before the Tribunal and on the contrary the only ground raised was that no part of the cause of action arose within the jurisdiction of the Tribunal. A

Few facts need to be noted.

Father of the deceased was not the claimant and it was only the mother. There was no material adduced before the Tribunal to show any dependency on the income of the deceased. The multiplier of 17 appears to have been taken on the basis of the age of the deceased. The interest rate of 15% is fixed also on the higher side. B

It is fairly a settled position in law that while parents are the claimants, the age of the deceased is not relevant and it is the age of the claimants which would determine the multiplier to be adopted. On that score it is clear that the Tribunal's assessment of the quantum of Award was incorrect. (See: *Jyoti Kaul and Ors. v. State of M.P. and Anr.*, [2002] 6 SCC 306, *National Insurance Co. Ltd. v. M/s. Swaranlata Das and Ors.*, [1993] Supp 2 SCC 743 and *C.K. Subramania Iyer and Ors. v. T. Kunhikuttan Nair and Six Ors.*, [1969] 3 SCC 64). C D

Deceased was the only daughter of her parents and was not staying with her parents and there is no material to show that she was contributing to the household expenses. Taking into account the age of the claimant and the monthly income as noticed by the Tribunal, a total sum of Rs.5,00,000/- shall be payable by the appellant to the respondent as Award. This quantum is fixed taking into account the age of the claimant, income of the deceased and other relevant factors like loss of love and affection, mental shock etc. Interest is fixed at the rate of 7.5% from the date of claim till payment. It is stated that a total sum of Rs.10,00,000/- has been paid to the respondent. If any further amount is to be paid on the basis of the direction as contained above, the same shall be paid within three months from today. If, however, the amount already paid is in excess of the entitlement, the same shall be returned within a period of three months. E F

The appeals are accordingly disposed of with no orders as to costs. G

D.G.

Appeals disposed of.