

Smt. Ashalata Das

Vs

New India Assurance Co. Ltd. and Others

Civil Appeals Nos. 3662 and 3663 of 1989.

(M. N. Venkatachaliah, N. D. Ojha, J. S. Verma JJ)

30.08.1989

### JUDGMENT

Special leave granted.

These appeals brought on behalf of Smt. Ashalata Das, a claimant in fatal accident action, are directed against certain directions contained in the appellate judgement dated July 20, 1980, of the High Court of Judicature at Calcutta in FMA No. 205 of 1979 preferred by the New India Assurance Co. Ltd., against the award dated April 19, 1978, made by the Motor Accidents Claims Tribunal, Calcutta. The High Court, while affirming the award of the Tribunal, however, directed the investment of the fund so as to enable the appellant to receive the monthly interest thereon and directed- and this is taken exception to in the appeal – that, after the lifetime of the appellant, the corpus of the investment should revert to the insurer.

The appellant instituted MAC No. 285 of 1973 before the Tribunal for award of compensation for the death of her son, Rabindranath Dass, in a motor accident that occurred on August 5, 1973. It was alleged that the said Rabindranath Dass was fatally injured in the accident involving lorry No. WBL 2377 owing to the actionable negligence of the driver. The deceased was stated to 14 years of age at the time of the accident and erring a sum of Rs. 60 per month. The proceedings culminated in the award dated April 19, 1978.

On appreciation of the material on record, the Tribunal held that the death was attributable to the actionable negligence on the part of the driver of the vehicle and the Tribunal, on certain calculations of its own in regard to the quantum of the loss of dependency, came to make an award in the sum of Rs. 16,000 together with interest at 6% per annum from the date of the award till realization. The insurer was held to be statutorily liable and, accordingly, was directed to satisfy the award.

An appeal was taken against this award by the insurer before the High Court on certain grounds. However, at the hearing, the insurer appears to have taken a liberal view of the matter and did not press the appeal. Adverting to this stand of the insurer, the High Courts stated:

*"In this matter, an award has been passed in favour of the claimant who is the mother of the deceased for a sum of Rs. 16,000, Rs. 200 as costs and interest at the rate of 6 per cent per annum. An appeal has been preferred against the same. Mr. Chaudhury appearing for the appellant insurance company has very fairly suggested that the insurance company was prepared to make ex gratia payment of the sum already deposited which is Rs. 16,000. It is ordered accordingly. It is ordered accordingly.*

Interest from the date of the claim till the date on such deposit at the rate. 8% per annum..... "

(emphasis \* supplied).

This was sufficient to dispose of the appeal.

However, the High court thought it proper in the circumstances of the case to issue certain further direction as to the investment of the corpus of the compensation which were intended to ensure that the appellant who was an old and illiterate person was not deprived of the funds by unscrupulous exploiters who might take advantage of her ignorance and deprive her of the only source of sustenance. The amount of compensation, together with accrued interest, till the date of the appellate judgement was quantified at Rs. 25,000 and was directed to be so invested. The High Court observed :

"We have to consider another aspect of the matter. We must see that the benefit is received by the claimant and not anybody else. If all the amounts are directed to be given to the ailing mother who is the claimant and is 60 years old, she may not enjoy the benefit of the same fully."

Accordingly, the High Court found it appropriate to direct:

"The insurance company is directed to deposit a sum of Rs. 25,000 with the special officer. The special officer shall invest the said amount in such a manner that at least a sum of Rs. 200 per month is obtained as interest each month so that the monthly payment can be made to her. For that purpose the special officer is directed to make an inquiry into this matter from different institution like post office, unit trust, etc., or any other institution where there is monthly interest scheme on payment of a lump sum of Rs. 25,000. The special officer shall take appropriate steps so that each month the claimant may receive this amount...."

It would appear that learned counsel, Mrs. Manjuri Gupta, Was good enough to offer to act as such special officer without any remuneration.

Then came a further direction in the judgment which is really the cause for the appellant's grievance. The High Court directed that :

"Upon the death of the claimant, this amount be returned to the insurance company."

The appellant's learned counsel submitted that, in the present case, the High Court had not made an award for mare monthly payments or annuity but had affirmed a lump sum award of Rs. 16,000 and interest thereon made by the Tribunal and that the further direction that the subject-matter of the award do, upon the death of the appellant, revert to the insurer was not only inconsistent with the earlier part of the judgment clearly affirming a lump sum payment but was, otherwise also, in justified in the circumstances of the present case. The amount directed to be invested, which was otherwise also a modest one, was not such as to suggest that the intended benefit was confined to only interest therefrom to be enjoyed by the appellant during her lifetime.

Learned counsel further submitted that, in the circumstances of the present case, the investment of the entire sum of Rs. 25, 000, during the lifetime of the appellant and virtually limiting her

beneficial interest only to the receipt of the interest of Rs. 200 or thereabouts per month would be unrealistic having regard to the nature and extent of the present needs of the ailing old lady which might require a more generous allowance than a meagre Rs. 200 per month for her food, shelter, raiment and medical relief.

Learned counsel for the insurer, however, sought to support the impugned direction and submitted that judgment, read as a whole, left no room for doubt that what was intended to be given to the appellant was the benefit of periodic payments during her lifetime and it was only to felicitate prompt monthly payments, limited and confined to the period of her life, that the investment was directed to be made. Learned counsel said that the provision for the reversion of the fund to the insurer was consistent with, and justifiable on, this scheme of limited relief contemplated by the appellate judgement.

On a consideration of the matter, we are afraid that judgment of the High court does not bear the construction sought to be placed on it by the insurer as to the nature and extent of the relief intended to be afforded to the appellant. The judgement does not indicate that the benefit intended by it was only in the nature of a monthly payment for and during the appellant's lifetime and not a lump sum award. It is not so much a question whether, in a fatal accident action, the Tribunal or the High Court, as the case may be, has and has not the power to award an annuity or other periodic payments in preference to a lump sum and once for all payment as it is one whether, in this particular case, the High court had actually done so. The first part of the judgment which we have excerpted earlier clearly indicated the stand of the insurer that it did not press its challenge to the lump sum award of Rs. 16,000 together with interest thereon. The award confirmed by the High Court was lump sum award. However, the High Court found it necessary to protect the interests of the appellant by ensuring the safety of the corpus of the fund by proper investment and providing for monthly payments of the interest accruing on the investment. These directions issued for the protection of the appellant did not have the effect of altering the nature and substance of the award into one of mere monthly payments of Rs. 200 limited to the appellant's lifetime. The further direction in the judgment that the corpus should revert to the insurer after the lifetime of the appellant does not square with the first part of the judgment which clearly affirmed a lump sum award of Rs. 16,000 and interest thereon in favour of the appellant. We, accordingly, hold that the direction for reversion of the corpus of the fund to the insurer upon the appellant's death requires to be deleted. It is, accordingly, set aside. We hold that the High court had granted a lump sum of Rs. 16, 000 with interest, which, as at the date of judgment, aggregated to Rs. 25, 000.

What remains to be considered is whether that directions as to the investment make adequate provision for the needs and requirements of the appellant. It is stated that the appellant is over 70 years of age now. The direction that the entire sum of Rs. 25,000 be permanently invested and that only the interest accruing thereon each month be recoverable by the appellant may not, in the circumstance of the case, be a reasonable one. In these days of steep inflation, the amount of Rs. 200 may not amount to much in the matter of providing even a frugal living for the appellant, who has apparently no other source of sustenance. The appellant is in the late evening of her life and there is no reason why the allowance should not be a little more generous.

In the circumstances, it appears to us that out of the sum of Rs. 25,000, a sum of Rs. 4,000 together with the entire undistributed accrued interest, if any, be paid to her immediately. The remaining sum of Rs. 21,000 be invested in any nationalized bank in the name of the appellant in six fixed deposits of Rs3,500 each, the period of the investment ranging from 1 year to 6 years, the first

deposit being for a period of one year; the second for two years and so on. The appellant shall be entitled to receive the interest accruing on all the six deposits every month. She shall be entitled to the proceeds of the deposit upon their maturity as and when the deposits mature. It shall be ensured that the appellant shall not be entitled to part with or negotiate the deposit receipts or enact them prematurely nor shall she be entitled to raise any loans on their security. The order of the High court is modified accordingly. The Tribunal is directed to implement the directions contained in this judgment for the benefit of the appellant.

We, however, make it clear that if the entire sum has already been invested pursuant to the directions of the High Court in any permanent investment and that investment cannot, in the opinion of the Tribunal, be recalled or disturbed, the Tribunal shall make a reference to this court within a month of the date of the receipt of this order for appropriate further directions.

These appeals are disposed of accordingly. No costs

Let a copy of this order be sent to the Motor Accidents Claims Tribunal, Calcutta, and 24 Parganas (13<sup>th</sup> Additional District Judge, Alipore), within 15 days' hereof.

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