National Insurance Co. Ltd.

Vs

M/s. Swaranlata Das and Others

Special leave Petition (Civil) No. 6400 of 1992

(M. N. Venkatachaliah, Dr. A. S. Anand JJ)

17.08.1992

ORDER

1. This petition for grant of special leave is directed against the judgment and order dated January 28, 1992 of the High Court of Gauhati, Agartala Bench enhancing in appeal the compensation in a fatal accident's action from Rs. 72,000 awarded by the Motor Accident Claims Tribunal to Rs. 1,50,000 to the dependents of a certain Swapan Das, aged 26 years, who dies as a result of the injuries sustained in a motor accident that occurred on June 28, 1984 at Pagla Devta Bari on Assam-Agartala road when a truck hit him.

2. On April 24, 1990, some six years after the accident, a claim was brought by the parents as well as the widow of the deceased Swapan Das for a compensation of about Rs. 11,00,000. The deceased was said to be a dry fish manager earning about Rs. 1,500 per month. The Tribunal did not accept this claim; but estimated the loss of dependency at Rs. 3,600 annually and capitalised it on 20 years' purchase value for arriving at the figure of Rs. 72,000. This sum along with interest at the rate of 12% from the date of filing of the petition was awarded.

3. The respondents-claimants preferred an appeal before the High Court claiming enhancement. The High Court enhanced the compensation to Rs. 1,50,000.

4. Shri Jitender Sharma, learned senior counsel for the petitioner submitted that the claim was barred by time as, indeed, according to Shri Sharma, Section 166(3) of the Motor Vehicles Act, 1988 contemplates only a limited power of condonation of delay in filing a claim. That provision reads :

> "166. (3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :
>
> Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

5. Shri Sharma stated that the provisions in the 1988 Act in this behalf detract from their counterpart in the 1939 Act. He submitted that the position that even in respect of claims arising out of accidents occurring before the commencement of the 1988 Act but instituted after its commencement are governed by Section 166(3) of the 1988 Act is settled by a pronouncement of this Court in Vinod

Gurudas Raikar v. National Insurance Co. Ltd. ((1991) 4 SCC 33).

6. Shri Sharma is right in this submission. The pronouncement of this Court in Vinod Gurudas Raikar case ((1991) 4 SCC 33) supports it; but this question had not been raise either before the Tribunal or the High Court. As the law on the matter is settled, it was not applied to the present claim as the petitioner did not raise it either before the Tribunal or before the High Court.

7. It is also true that while the Tribunal determined the compensation applying the method of capitalisation of loss of dependency by taking Rs. 3,600 as the annual loss of dependency and applying a multiplier of 20, the order of the High Court enhancing the compensation, we are constrained to say, does not contain any cogent reasons. The High Court does not discuss the evidence nor has recorded its own findings as to the quantum of the dependency lost. A global award was made on a reasoning which had better be stated in High Court's own words :

> "We have considered the memo of appeal, the award and also the monthly income as stated in the petition. We have also made necessary deduction for the personal expenses of the deceased and taking the expectancy of life at 65 years and deducting 30% for lump sum payment, in our opinion, a sum of Rs. 1,50,000 would be appropriate compensation in the present case.
>
> Our attention has been drawn to page 9 of the impugned judgment. We are not sure how the calculation has been made by the learned Tribunal."

8. This is all the reasoning in the judgment. We are afraid that the reasoning is incomplete and cannot by itself support the enhancement. The appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependents whichever multiplier is lower. It is, no doubt, true that as a rough and ready measure, the method of aggregating the total expected income for the remainder of the life-expectancy with appropriate deductions towards uncertainties of life and for lumpsum payments is also resorted to. But this method is now considered unscientific and is virtually obsolete. At all events wherever it is resorted to it would require to be cross-checked with the results of the appropriate and the more scientific method of capitalisation of the loss of dependency.

9. In view of these deficiencies in the judgment we should have granted special leave. But then it is a hard case where a young life, the bread winner of a family, is snuffed out ere its prime as a result of the tragic accident. The claimants aver that the deceased was earning Rs. 1,500 per month. Even if we assume as a rough and ready estimate Rs. 750 per month or Rs. 9,000 per year as the loss of dependency - which may not be an unreasonable estimate - and capitalise it on a multiplier of 15 (which would be the appropriate multiplier having regard to the age of the deceased) the resultant figure will be 1,35,000. To this should be added the usual awards for loss to the estate and loss of consortium which are generally in conventional figures ranging from Rs. 5,000 to Rs. 10,000 on each count. If Rs. 7,500 on each count is added, the qualification of Rs. 1,50,000 arrived at the High Court could be justified; though on a reasoning entirely different from any discernible or manifest from the appellate judgment of the High Court.

10. In this view of the matter and in view of the fact that the plea of limitation had no been urged at all before the High Court, we decline to interfere with the award made. However, the law as to the extent of the power of condonation of delay, as urged by Shri Jitender Sharma, is correct and has been so declared in Vinod Gurudas Raikar case ((1991) 4 SCC 33).

11. The petition shall deposit in the Gauhati High Court (Agartala Bench) within six weeks from today the amount of Rs. 1,15,000 along with interest at the rate of 12% p.a. from the date of filing of the petition. On the deposit being made Rs. 20,000 each, shall be permitted to be withdrawn by respondent 1 respondent 2 on proper verification to the satisfaction of the Registrar/Additional Registrar of the High Court of Gauhati (Agartala Bench). The balance amount of Rs. 1,10,000 plus the accrued interest shall be deposited in equal share, by the High Court, in the name of each of the two respondents with any nationalised bank or any investment of the Unit Trust of India to earn the maximum interest. The deposit shall be initially made for three years and shall be renewable thereafter every three years. Respondents 1 and 2 shall be entitled to draw in interest on such deposit monthly/quarterly.

12. The fixed deposit-receipt or the security, as the case may be, shall neither be pledged nor shall be offered as security for any loan, nor shall any loan be permitted to be drawn against the same except with the previous permission of the Gauhati High Court to ensure that the amount continues to remain in the bank or the UTI for the benefit of respondents 1 and 2. In case the fixed deposit receipt is required to be encashed, after its maturity or at any other time, the same shall be done only with the approval of the Gauhati High Court after satisfying the court as to the genuinesses of the need to encash the same by both or either of the respondents.

13. SLP is dismissed accordingly.

Court Masters.

</html