

**SUPREME COURT OF INDIA**

Sandhya Rani Debbarma & Ors.

Vs.

National Insurance Company Ltd. & Anr.

C.A.No.9194 of 2016

(V.Gopala Gowda and Adarsh Kumar Goel,JJ.,)

16.09.2016

**JUDGMENT**

**V.Gopala Gowda,J.,**

SLP(Civil)No.1448 of 2014

1. Leave granted.

2.The present appeal has been filed after a delay of 2824 days against the impugned judgment and order dated 17.05.2006 passed by the learned single judge of the High Court of Tripura at Agartala in Writ Petition (C) No. 113 of 2006. The Writ Appeal preferred by the appellants against the same before the Division Bench of the High Court, came to be dismissed as not maintainable vide judgment and order dated 22.08.2013. The appellants herein filed an SLP challenging the same. Vide order dated 05.05.2014, this Court directed the appellants to amend the Special Leave Petition and impugn the judgment and order of the learned single judge as well. Having regard to the fact that the delay was caused only on account of the appellants pursuing the remedy of filing a Writ Appeal before the Division Bench of the High Court, as well as the fact that claim is made under Section 166 of the Motor Vehicles Act, 1988, which is a beneficial legislation, we deem it fit and proper to condone the delay in filing the Special Leave Petition. Hence, delay is condoned.

3. The necessary relevant facts required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder:

“On 14.11.2003, the deceased, while travelling in a vehicle (Jeep) bearing No. TR013476 met with an accident at Assam-Agartala Road near Banukumari, at Baramur due to collision with a Bus bearing No. TR01-1212 coming from opposite direction. He was taken to the nearby Government Hospital namely, GBP Hospital, Agartala where he was declared 'brought dead'. Jirama P.S. Case No. 90 of 2003 was

registered on the very same day under Sections 270, 338 and 304A of the Indian Penal Code (hereinafter referred to as "IPC").

4. The appellants herein (being the legal heirs of the deceased) filed Title Suit (M.S.C.) No. 1 of 2004 before the Motor Accident Claims Tribunal, West Tripura, Agartala (hereinafter referred to as "the Tribunal") claiming a total compensation amounting to Rs.33,45,000/-. It was submitted that the deceased was survived by his parents, wife and two minor children. On the day of the accident, his age was 31 years and 4 months. He was working as Junior Engineer (Grade-I) under the Government of Tripura and drawing monthly salary of Rs.13,504.50/-, without imposition of income tax, as per the statutory exemption in the state of Tripura from paying income tax to the members of Scheduled Tribes. The owner of the jeep and its insurer-National Insurance Company Ltd. as well as the owner of the Bus and the insurer-Oriental Insurance Company Ltd. were made parties to the claim.

5. The Tribunal by way of judgment and award dated 14.12.2005 held that the age of the deceased being 31 years at the time of the accident, a multiplier of 17 would be applicable and awarded as under:

Head under which awarded	Amount
Loss of dependency	32,32,000/-
Funeral expenses	2,000/-
Loss of consortium	25,000/-
Loss of estate	2,500/-
Total	32,52,700/-

The Tribunal further ordered that the insurer of both the vehicles involved in the accident, that is, the bus and the jeep were equally liable to pay the compensation. Thus, the National Insurance Co. Ltd (insurer of the jeep) and the Oriental Insurance Co. Ltd. (insurer of the bus) were ordered to pay a sum of Rs.16,26,350/- each, along with 6% interest per annum from the date of filing of the claim petition to the appellants. It was further ordered by the Tribunal that the payment had to be paid within a period of two months from the date of receipt of the award, failing which the interest would be payable at the rate of 9% per annum.

6. Aggrieved by the said Award passed by the Tribunal, the National Insurance Company Ltd. challenged the Award by filing Writ Petition No. 113 of 2006 under Articles 226 and 227 of the Constitution of India before the learned single Judge of Gauhati High Court. The other insurer-Company did not prefer any appeal.

7. The learned single judge of the High Court, by way of judgment and order dated 17.05.2006 allowed the writ petition and modified the Award passed by the Tribunal by reducing the amount from Rs.32,52,700/- to Rs.20,40,000/- only. The learned single judge, held as under:

"4. But the finer question of law is where none of the grounds permitted under Section 149(2) of the act has been taken as ground for the purpose of approaching this Court under Article 227 for setting at right alleged perversity, gross infirmity and infraction of settled legal principles which constitute parameter of the Tribunal, whether plenary powers of a writ court can be kept at bay in the name of the restrictions and limitations imposed by section 149(9) of the act."

On the issue of calculation of the compensation amount, the learned single judge observed:

"8. In the case on hand, the average monthly gross income after double advancement was assessed at Rs. 16,750/-from which only Rs. 1, 000/- was deducted for taxes, self-maintenance and pleasure of the deceased which in my view is a gross perversity because of its fanciful subjectivity, irrationality in total disregard of the ratio noticed above. It amounts to stepping out of its parameters by the Tribunal."

The learned single judge further went on to hold:

"13. It is thus clear that where on the face of it, an award is a perversity due to gross non-observation of the settled legal principle in determining the just amount of compensation, it can be said that the Tribunal has not acted within its parameters calling for interference by the High Court in exercise of its plenary supervisory powers"

8. Aggrieved, the appellants filed Writ Appeal No. 38 of 2006 before the High Court of Tripura, Agartala. The Division Bench of the High Court dismissed the Writ Appeal as not maintainable vide judgment and order dated 22.08.2013 holding that the order passed by the learned single Judge was under Article 227 and not under Article 226 of the Constitution of India, and thus, the same was not amenable to being challenged by way of a Writ Appeal. The Division Bench held as under:

"An appeal is the creation of a statute and if the Single Judge has clearly mentioned that he is exercising powers under article 227 against which no appeal lies, then the mere fact that the petitioner had also invoked the provisions of Article 226 would not be sufficient to hold that an appeal would lie against such an order. The law is well settled that what cannot be done directly, cannot be permitted to be done in an indirect manner "

Hence, the present appeal.

9. Mr. Bijan Kumar Ghosh, learned counsel appearing on behalf of the appellants submits that the learned single judge of the High Court grossly erred in entertaining the writ petition filed by the insurance company against the award passed by the Tribunal. The learned counsel places reliance on the decision of a Three Judge Bench of this Court in the case of *Sadhana Lodh v. National Insurance Co. Ltd.*<sup>1</sup>, where in it has been held that a writ petition under Article 227 of the Constitution of India, challenging the award of the Tribunal

in a motor accident case is not maintainable. It is further contended that it was not open to the High Court to enlarge the grounds of appeal which have been provided for in the statute to the insurer in cases of motor accidents. Thus, the learned counsel prays that the award passed by the Tribunal be restored and that the compensation be awarded to the appellants at the interest rate of 9% per annum.

10. On the other hand, Mr. S.L. Gupta, learned counsel appearing on behalf of the respondent-Insurance Company submits that the impugned judgment and orders suffer from no infirmity in law. It is submitted that the award was passed by the Tribunal in complete ignorance of the decisions of this Court in the cases of *G.M., Kerala SRTC v. Susamma Thomas*<sup>2</sup>, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*<sup>3</sup>, as well as *T.N. State Transport Corpn. Ltd. v. S. Rajapriya*<sup>4</sup>. The learned counsel submits that the monthly income of the deceased was Rs.10,020/- at the time of the accident, which was wrongly taken as Rs.13,500/-. The Tribunal further arbitrarily arrived at the figure of Rs.16,750/- per month as the monthly salary of the deceased. Thus, the award of compensation of Rs.32,52,700/- arrived at by the Tribunal was definitely on the higher side. Thus, the learned counsel contends that the learned single Judge has rightly interfered with the quantum of compensation awarded by the tribunal.

11. We have heard the learned counsel appearing on behalf of the parties and have perused the evidence and Materials placed on record, as well as the impugned judgments and orders passed by both the learned single judge and the Division Bench of the High Court.

12. At the outset, we make it clear that we are dealing with the matter on merits, without going into the question of maintainability of the writ petition filed by the insurance company before the single judge of the High Court, questioning the correctness of the quantum of compensation awarded by the Tribunal.

13. The date of birth of the deceased as shown on the admit card of the Tripura Board of Secondary Education was 03.07.1972. The accident occurred on 14.11.2003. Thus, the age of the deceased at the time of the accident was 31 years and 4 months. Thus, the appropriate multiplier in the instant case is 17. On the issue of the salary of the deceased at the time of the accident, the learned single judge proceeds on the assumption that it was Rs.10,020/- on the ground that the same was the amount mentioned in the claim petition. Thus, we proceed on the basis that the monthly income of the deceased at the time of the accident was Rs.10,020/-. Further, in accordance with the principle of law laid down by this Court in the case of *Santosh Devi v. National Insurance Corporation*<sup>5</sup>, an addition of 50% must be made to the actual salary income of the deceased towards future prospects in those cases where the deceased had a permanent job and was below 40 years of age at the time of the accident. Thus, in the instant case, 50% of Rs.10,020/- comes to Rs.5,010/-, which if added gives the income as Rs.15,030/-. In accordance with the principle of law laid down by this Court in the case of *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr (supra)*, where the number of dependents of the deceased are between 4 and 6, 1/4th of the income of the deceased is to be deducted towards the living and personal expenses. Since in the present case, there are 5 dependents, (wife, two minor children, mother and father), 1/4th of the

monthly income, that is, Rs.3750/- (rounded off) is to be deducted towards living and personal expenses.

14. Deducting Rs.3750/- on account of personal and living expenses, the monthly income comes to Rs.11, 280/-. Since the age of the deceased at the time of the accident was 31 years and 4 months, multiplier Of 17 is applicable. Thus, the total loss of dependency comes to:

“Rs.11,280/- X 12 X 17 = Rs.23,01,120/- The High Court arrived at the amount of Rs.20,40,000/- in complete and utter forgetfulness of the principles of computing compensation laid down by this Court in catena of cases, which shall be referred to in a later part of this judgment. What is more shocking is the logic applied by the High Court in modifying the award to Rs.20,40,000/-, which is only the annual loss of dependency, thereby, completely missing the next crucial step in determining the award of compensation due to the dependents of the deceased under the other different heads such as loss of estate, funeral expenses, loss of consortium etc. It is worth reproducing the reasoning of the learned single judge in not awarding any amount under the other heads:

"19. For the reasons and discussions aforementioned, this writ petition has merit and the same is allowed modifying the award to Rs. 20,40,000/- only. As this amount would fetch perpetually more than Rs. 10, 000/- per month by way of interest @ 6% per annum without consuming the principal sum during the period of dependency, no further award on any other count is called for "

It is difficult for this Court to understand what is the legal principle on which the learned single judge has relied on to arrive at the conclusion that no further award under any other head is called for, when the same has been the well settled position of law by this Court.

15. In light of the three judge bench decision of this Court in the case of *Rajesh & Ors. v. R.ajbir & Ors*<sup>6</sup>.as well as the decision of this Court in the case of *Kalpanaraj & Ors.\* v. Tamil Nadu State Transport Corporation*<sup>7</sup>, the appellants are further entitled to compensation under the following heads:

Head	Amount
Funeral expenses	Rs. 25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of guidance to minor children	Rs.1,00,000/-
Loss of love and affection to aged parents	Rs.1,00,000/-
Loss of estate	Rs.1,00,000/-
Litigation costs	Rs. 25,000/-
Total	Rs.4,50,000/-

The appellants are thus, entitled to a total compensation of Rs.23,01,120/- +Rs.4,50,000/- = Rs.27,51,120/-. This amount is payable by the respondents to the appellants, not at rate of 6% interest per annum as the learned single judge has held, but at the rate of 9% per annum, according to the principle laid down by this Court in the case of *Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors*<sup>8</sup>.

16. The appeal is accordingly allowed. The judgments and orders passed by the Division Bench and the learned Single Judge of the High Court are set aside. Both the insurance companies shall be liable to pay half a share each of the compensation amount of Rs.27,51,120/-, at an interest rate of 9% per annum from the date of filing the claim petition till the date of realization. The respondent-Insurance companies are directed to pay the amount as awarded in this judgment to the claimants within four weeks from the date of receipt of the copy of this judgment and order in terms of the apportionment of the compensation made by the Tribunal. No costs.

<sup>1</sup>(2003) 3 SCC 0524

<sup>2</sup>(1994) 2 SCC 0176

<sup>3</sup>(2009) 6 SCC 0121

<sup>4</sup>(2005) 6 SCC 0236

<sup>5</sup>(2012) 6 SCC 0421

<sup>6</sup>(2013) 9 SCC 0054

<sup>7</sup>(2014) 5 SCALE 0479

<sup>8</sup>(2011) 14 SCC 0481