

**SUPREME COURT OF INDIA**

D.M., Oriental Insurance Co. Ltd.

Vs.

Swapna Nayak & Ors.

C.A.No.3862 of 2013

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

23.01.2017

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

1. C.A. No. 3862 of 2013 is filed by the Oriental Insurance Company Ltd.(for short, “the Insurance Company”) and C.A. Nos. 3863-3864 of 2013 are filed by the claimants. These appeals are filed against the common final judgment and order dated 21.09.2012 of the High Court of Orissa at Cuttack in M.A.C.A. No.1 of 2012 and M.A.C.A. No. 62 of 2012 whereby the High Court partly allowed M.A.C.A. No.1 of 2012 filed by the Insurance Company and, in consequence, dismissed M.A.C.A. No.62 of 2012 filed by the claimants.

2. In order to appreciate the issue involved in these appeals, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.

3. On 16.12.2006, one Mathurananda Nayak, a resident of U.S.A., and his mother Jita Nayak along with two others while coming from Cuttack side towards Aredi on NH No. 5 by a car bearing Registration No. OR-02-S-0565, collided with a truck bearing Registration No. OR-09-E-6357 driven by its driver which was coming from Paniloili side. As a result of the said accident, Mathurananda Nayak, Jita Nayak along with driver of the car sustained injuries and later succumbed to the injuries on the same day.

4. The claimants in this appeal are wife and sons of the deceased Mathurandanda Nayak, who was aged about 36 years at the time of accident. He was working as a Senior Information System Analyst under Traci Cagle Human Resource Representative a Xilinx Inc-2100 Logic Drive San Jose, CA-95124, U.S.A. and was earning \$97,080,60 per annum by way of salary. He had come to India for few days when unfortunately he met with an accident and died.

5. The legal heirs of the deceased filed two separate claim applications for compensation under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”)

before the Motor Accidents Claim Tribunal, Cuttack (for short, “the Tribunal”) being MAC No. 25 of 2007 (filed by legal heirs of Mathurananda Nayak) and MAC No. 30 of 2007 (filed by the legal heirs of Jita Nayak) against the owner of the vehicle and the Oriental Insurance Company Ltd. being the insurer of the truck.

6. The owner of the insured vehicle did not appear in spite of service and the applications were proceeded ex-parte.

7. By a common Award dated 25.10.2011 in MCA No. 25 of 2007, the Tribunal allowed the applications. So far as M.C.A. No.25 of 2007 was concerned, the Tribunal held that the accident was caused due to rash and negligent driving of truck driver, that the deceased was aged 36 years, that annual income of the deceased was Rs.43,68,624/- (in Indian currency by applying the exchange rate of Rs.45/- per dollar). The Tribunal then applied the multiplier of 15 and after deducting 1/3rd towards personal expenses and adding therein some amount towards conventional heads, awarded a total sum of Rs.4,36,95,740/- to the claimants and accordingly directed the Insurance Company to pay the awarded sum to the claimants along with interest at the rate of 7.5% from the date of application.

8. So far as MCA No. 30 of 2007 was concerned, the Tribunal, by applying the multiplier of 5, awarded a sum of Rs.1,29,500/- with interest at the rate of 7.5% p.a. for the death of Jita Nayak.

9. Challenging the said award, the Insurance Company filed MACA No.1 of 2012 before the High Court and the claimants filed MACA No.62 of 2012 for enhancement of compensation amount awarded to them by the Tribunal.

10. By impugned common judgment dated 21.09.2012, the High Court partly allowed the appeal filed by the Insurance Company and reduced the compensation amount of Rs.4,36,95,740/-, which was awarded by the Tribunal, to Rs.3,75,00,000/-. It was held that the Tribunal deducted 1/3rd towards personal expenses of the deceased but did not deduct anything towards income tax from the salary. The High Court, therefore, interfered with the determination made by the Tribunal and accordingly re-worked the compensation and reduced it to Rs.3,75,00,000/-. All other findings were withheld. As a consequence, the claimants’ appeal for enhancement of compensation was dismissed.

11. Challenging the said judgment of the High Court, the Insurance Company has filed C.A. No. 3862 of 2013 seeking further reduction in the award of compensation whereas the claimants have filed C.A. Nos. 3863-3864 of 2013 seeking enhancement in the compensation.

12. Heard Mr. Vishnu Mehra, learned counsel for the Insurance Company. None appears for the claimants though served.

13. Mr. Vishnu Mehra, learned counsel appearing for the appellant (Insurance Company-insurer of the offending vehicle) contended that the High Court though was right in allowing

the appeal filed by the Insurance Company in part and was also right in reducing the quantum of compensation awarded by the Claims Tribunal from Rs.4,36,95,740/- to Rs.3,75,00, 000/- but according to him, the High Court should have further reduced the compensation instead of confining it to Rs.3,75,00,000/- only.

14. Placing reliance on the decisions in *Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors.*<sup>1</sup>, *Reshma Kumari & Others vs. Madan Mohan And Another*<sup>2</sup>, and *United India Insurance Co. Ltd & Others vs. Patricia Jean Mahajan And Others*<sup>3</sup>, learned counsel contended that the High Court erred in applying multiplier of 15 for determining the quantum of compensation payable to the claimants. According to him, keeping in view the law laid down in the cases cited at the bar, the multiplier of 10 at best could be applied in place of 15. Learned Counsel further contended that in the absence of any evidence adduced by the claimants on the issue of future prospects of the deceased in his life, no case is made out for award of any compensation under this head.

15. Having heard the learned counsel for the appellant (Insurance Company) and on perusal of the entire record of the case, we have formed an opinion to dismiss both the appeals and, in consequence, are inclined to uphold the order of the High Court which, in our view, does not call for any interference.

16. On perusal of the decisions cited at the bar and further having regard to the totality of the facts and circumstances of the case and the concurrent findings of two courts and on material issues such as the determination of annual income of the deceased, his age, the number of dependents etc., we do not find any good ground to interfere in the impugned order. In our view, such findings, apart from being concurrent, cannot be said to be, in any way, arbitrary and nor they result in awarding a bonanza or a windfall to the claimants so as to call for further reduction in the compensation awarded by the High Court.

17. In other words, in our view, what has been eventually awarded to the claimants by the High Court appears to be just and reasonable compensation within the meaning of Section 166 of the Act and there does not appear any good ground for further enhancement under any of the heads including under the head of future prospects as claimed by the claimants in their appeal and nor any case is made out for further reduction by applying the lesser multiplier or to make further deduction in the salary component of the deceased as claimed by the Insurance Company.

18. When we find that under one head, reasonable amount has been awarded and under another head, nothing has been awarded though it should have been so awarded and at the same time, we notice that eventual figure of the award of compensation payable to the claimants appears to be just and reasonable then in such eventuality, we do not consider it proper to interfere in such award in our appellate jurisdiction under Article 136 of the Constitution. In other words, if by applying the tests and guidelines, we find that overall award of compensation is just and fair, then, in our view, such award deserves to be upheld in claimants' favour. We find it to be so in the facts of this case having taken note of all relevant facts and circumstances of the case.

19. In the light of foregoing discussion, we find no merit in the appeals, i.e., the appeal filed by the Insurance Company seeking further reduction in the compensation and the appeals filed by the claimants seeking enhancement in the compensation and accordingly dismiss the appeals and, in consequence, uphold the order of the High Court calling no interference therein.

20. Let the entire amount of compensation awarded to the claimants by the High Court be paid to the claimants by the Insurance Company within one month from the date of receipt of this judgment after adjusting the amount already paid. No costs.

Judgment Referred.

<sup>1</sup>(2006) 3 SCC 0242

<sup>2</sup>(2013) 9 SCC 0065

<sup>3</sup>(2002) 6 SCC 0281