

CASE NO.:
Appeal (civil) 5823 of 2006

PETITIONER:
Maharashtra State Road Transport Corpn. ...Appellant

RESPONDENT:
Lalnipuii ...Respondents

DATE OF JUDGMENT: 14/12/2006

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (C) No.15507 of 2005)
With
CIVIL APPEAL NOS. 5824 2006
(Arising out of SLP(C) Nos. 14260-14261 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

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 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
per annum Rs.9,340 x 12 | = Rs.1,12,080/- |
| 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 still alive as per note
under the Schedule. | (-) = Rs. 5,97,760/-
Rs.11,95,520/- |
| 4. Funeral Expenses. | = + Rs. 2,000/- |
| 5. Loss of estate. | = + Rs.2,500/- |
| 6. Total compensation due
to the claimant is | =Rs.12,00,020/- |

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.

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.

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.

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.

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. Swarnlata Das and Others (1993 Supp (2) SCC 743) and C.K. Subramania Iyer and Ors. v. T. Kunhikuttan Nair and Six Ors. (1969 (3) SCC 64).

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.

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