

CASE NO.:
Appeal (civil) 5193 1997
of 1 an

PETITIONER:
Abati Bezbaruah

RESPONDENT:
Dy. Director General Geological Survey of India & Anr.

DATE OF JUDGMENT: 14/02/2003

BENCH:
S.B. Sinha

JUDGMENT:

J U D G M E N T

S.B. SINHA, J :

The claimant is in appeal before us being aggrieved by and dissatisfied with the judgment and award dated 10th April, 1996 passed by the High Court of Gauhati in M.A. (F) No. 208 of 1994 modifying an award passed by the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), Shillong in M.A.C. Case No. 20 of 1991.

The basic fact of the matter is not in dispute. The husband of the appellant herein late (Dr.) Ramani Kanta Bezbaruah met with a fatal accident on 13th November, 1990 while he was proceeding on a scooter whence a jeep bearing registration No. MLK-5548 dashed against it. The claimant claimed compensation for a sum of Rs. 27,46,000/- before the Motor Accidents Claims Tribunal. The Tribunal, however, having regard to the deceased's salary which at the relevant point of time was Rs. 3500/- per month, calculated the monthly dependency at Rs. 1700/-. The Tribunal calculated the life expectancy of the deceased to be 65 years, and the age of the deceased at the time of accident being 40 years, applied 15 as multiplier. However, from the said amount, 20% was directed to be deducted towards uncertainty of life as well as 10% for getting the lump sum amount and thus on that basis the amount of compensation which would have otherwise come to Rs. 3,06,000/- was reduced to Rs. 2,14,200/-. A sum of Rs. 3,000/- was, however, awarded as expenses incurred by the family for the treatment of the deceased, and travelling expenses etc. A further sum of Rs. 3,000/- was awarded by way of loss of consortium, Rs. 6000/- towards the expenses of cremation, Rs. 3,000/- for loss of love and affection. On the said basis a total compensation of Rs. 2,50,200/- was awarded. It was further directed that the awarded amount be paid to the claimants with interest at the rate of 6% per annum. The High Court in appeal, however, held that having regard to the income of the deceased, which was Rs. 3500/- per month, the loss of dependency should be enhanced to the tune of Rs. 2,000/- per month. So far as rate of interest is concerned, the same was also directed to be enhanced to 8% per annum from the date of filing of the claim till the date of the receipt of the awarded amount.

Mr. A.P. Mohanty, the learned counsel appearing on behalf of the appellant raised two contentions in support of this appeal. The learned counsel would firstly submit that the rate of interest prevailing at the relevant time being 10%, the High Court erred in granting interest at the rate of 8% per annum. The learned counsel in support of the said contentions relied upon R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others [(1990) 1 SCC 356], Kaushnuma Begum (Smt.) and Others Vs. New India Assurance Co. Ltd. and Others [(2001) 2 SCC 9] and United India Insurance Co. Ltd. and Others Vs. Patricia Jean Mahajan and Others [(2002) 6 SCC 281].

The learned counsel would next contend as the appellant was earning about Rs. 3500/- per month, i.e. Rs. 42,000/- per year, upon deducting one third thereof from the said amount, a sum of Rs. 28,000/- per annum should have been held to the loss of dependency and in that view of the matter the amount of compensation should have been calculated by applying multiplier of 16 as the age of the deceased at the time of the accident was 40 years.

Mr. Ashok Bhan, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that in a case of this nature awarding of interest at the rate of 9% would be fair having regard to the decision of this Court in United India Insurance Co. Ltd. (supra). The learned counsel, would further draw our attention to the fact that multiplier of 10 was applied in that case.

The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

In R.L. Gupta (supra), interest at the rate of 12% was awarded. However, no reason has been assigned in support thereof.

In Kaushnuma Begum (supra) the amount of compensation was directed to be paid with interest at the rate of 9 per cent per annum from the date of claim. The same rate of interest was awarded, as noticed hereinbefore, in the case of United India Insurance Co. Ltd. (supra).

We are of the opinion that the amount of interest should, having regard to the facts and circumstances of the case, be paid at the rate of 9% per annum.

The structured formula base has been set out in the Second Schedule to the Motor Vehicles Act.

It is now a well settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation of the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

The victim at the relevant time was 40 years of age. The Tribunal and the High Court, therefore, cannot be said to have committed an error in applying the multiplier of 15. The only question which is required to be considered now is as to how the multiplicand should be arrived at.

The deceased at the time of accident was a young man. He had a stable job. A reasonably liberal view of his future prospects should have, therefore, been taken into consideration by the High Court as well as by the Tribunal.

Having regard to the prospects and advancement of the future career, a higher estimate of the yearly income at Rs. 45,000/- would not be out of place. From the said amount, one-third of the gross income towards personal living expenses should be deducted. The amount of Rs. 30,000/- should, thus be determined as the loss of dependency. The said sum should be capitalized by applying the multiplier of 15, which comes to Rs. 4,50,000/-.

This appeal is allowed in part to the extent mentioned hereinbefore.

In the facts and circumstances of the case, there shall be no order as to costs.

JUDIS