

S.B. Civil Misc. Appeal No.121/2002
Mst. Kailashi & Ors. Vs. Mohan Lal & Ors.

Date of Judgment : 27/10/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr. Nitin Jain, for appellants
Mr. Virendra Agrawal] for respondents
Mr. Rishipal Agrawal]

The instant appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Kekri, Distt. Ajmer vide award dt. 26th September, 2001.

The claimants are wife, five minor children and mother of the deceased Goverdhan, who was 35 yrs. of age and working as Labourer died in an accident on 29th September, 1998. Learned Tribunal after taking into consideration the material on record assessed the income of the deceased as Rs.1500/- per month. After 1/4th deduction towards his personal expenses, Rs.1200/- was considered to be monthly dependency of the family and with the multiplier of 14 awarded total compensation of Rs.2,01,600/- towards loss of income and Rs.30,000/- towards consortium, love and affection, funeral expenses towards non-pecuniary loss.

After computing the compensation, the Tribunal recorded further finding that it was a case of composite negligence and considered that out of total compensation awarded, the insurer of one of the offending vehicle No.RJ-1G-1560 was liable to pay 75% amount of compensation, rest 25% was to be recovered from owner or insurer of vehicle No.RJ-19G-3882 and since the claimant failed to implead either the owner or insurer of another offending vehicle, the claimants are entitled for compensation from the offending vehicle No.RJ-1G-1560 towards 75% only of his negligence along with interest @9% from the date of filing of claim application.

Mr. Nitin Jain, counsel for appellants contends that the learned Tribunal has committed an error in adopting the multiplier of 14. Looking to the age of deceased, who was 35 yrs. of age, multiplier of 17 is provided in 2nd Schedule appended to the Act and apart from it, the finding, which has been recorded with respect to composite negligence of the offending vehicle, is also perverse and even though for the sake of arguments if accepted so far as claimants are concerned, he is at liberty to recover from either of offending vehicle or insurer as the case may be and in support of his contention he has

placed reliance on the judgment of this Court in
Sampat Kunwar Bai Vs. Gurmeet Singh [1988 ACJ 342].

Counsel for respondents, on the other hand, vehemently opposed and submitted that what has been awarded by the learned Tribunal is just and reasonable and so far as the question of composite negligence is concerned, if the claimants are failed to implead the owner or insurer of another offending vehicle, their liability cannot be fastened upon him.

I have considered the submissions of both the parties and with their assistance perused the material on record.

Undisputedly, the learned Tribunal recorded a finding with respect to composite negligence and arrived to a conclusion holding both the offending vehicles negligent and divided the compensation payable in the ratio of 25%-75%. In my opinion, in the case of composite negligence, the option is available with the claimants to get their amount of compensation recovered from either of offending vehicle or insurer and such finding recorded by the Tribunal in bifurcating the amount of compensation to be recovered from the offending vehicle, in my

opinion, is wholly perverse. This court in the case of Sampat Kunwar Bai [supra] has held as under:

"The principle of 'composite negligence' is, where more than one person are responsible in the commission of the wrong, the person wronged has a choice of proceeding against all or anyone or more than one of wrongdoers. Every wrongdoer is liable for the whole damage if it is otherwise made out, and it does not lie in the mouth of one wrongdoer to say though I am also responsible, yet, the other man was also equally responsible for the wrong and on this basis he cannot avoid the liability to the person wronged.

It can, therefore, be said that in case a person is injured without any negligence on his part and he in no way contributed to the negligence, no case of contributory negligence, no question of apportionment of compensation is made out. In case an accident occurs in which a person dies and the accident is the result of the composite negligence of both the parties it is open for the legal representatives of the deceased to claim compensation from the joint tortfeasors who are liable jointly or severally. This court [G.M. Lodha, J.] in the case of Mohan Lal Vs. Balwant Kaur, 1 (1985) ACC 322, held that the joint tortfeasors are jointly liable in the accident cases for the negligence, can be made liable jointly and severally. the claimant can choose to file claim petition against any one of them and recover the damages from anyone of them. It was further held that the contention that unless the joint tortfeasors are made parties, a claim petition cannot survive, is not supported by any decision. In view of the learned Judge joint tortfeasors may be proper parties but cannot be necessary parties."

In view of what has been observed above, 25% of the compensation which has been deducted by the

learned Tribunal is not at all justified and such finding deserves to be set aside.

So far as the multiplier adopted by the Tribunal is concerned, ordinarily the 2nd Schedule appended to the Act has to be followed unless any other reason or exceptional circumstances are forthcoming. The learned Tribunal has not recorded any finding for adopting the multiplier of 14. Looking to the age of the deceased in the case of **Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India [AIR 2003 SC 1817]**, the apex court has examined the applicability of the 2nd Schedule appended to the Act and observed that multiplier provided in the 2nd Schedule has to be ordinarily followed strictly and there should not be any deviation from the 2nd Schedule appended to the Act. In my opinion, in the absence of any reason forthcoming, adopting multiplier of 14 by the Tribunal requires interference and the claimants are entitled for multiplier of 17 as per 2nd Schedule appended to the Act. Thus, the claimants are entitled for compensation for Rs.2,74,800/- [Rs.2,44,800/- (1200x12x17)] towards economic dependency of the family plus Rs.30,000/- towards consortium, love and affection, funeral expenses.

Consequently, the appeal stands allowed and the appellants are entitled for enhanced compensation of Rs.1,01,100/- (Rs.2,74,800/-/- minus Rs.1,73,700/-/- as awarded by Tribunal) which shall carry interest @ 6% from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by the Insurance Company through A/c payee bank draft/pay order before the Tribunal within one month.

The Tribunal is further directed to deposit the enhanced compensation in Monthly Income Scheme of Post Office for a term of six years in joint names of claimants who will be entitled to receive monthly interest on post office MIS account supra as well as full amount of MIS on its maturity.

To the above extent, the impugned award stands modified and the finding of Tribunal for deducting 25% of the compensation for holding composite negligence is set aside. No order as to costs.

[Ajay Rastogi],J.

FRB.