

A.F.R.

ORISSA HIGH COURT: CUTTACK

M.A.C.A. No.590 of 2007

From an Award dated 09.05.2007 passed by Shri S.P.Sarangi, Member, 2nd Motor Accident Claims Tribunal, Northern Division, Sambalpur passed in Misc. (A) Case No.267 of 2002(S).

United India Insurance Company Ltd.,
Divisional office, AT/PO: Sambalpur ... Appellant.

-Versus-

Smt. Sunita Naik and others ... Respondents.

For Appellant : M/s A.K.Mohanty, Sr. Advocate
M.C.Nayak & D.C.Dey

For Respondents : M/s D.Pati, S.K.Mishra &
S.N.Sharma
(For R-1 to 4)

P R E S E N T :

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA

Date of Judgment: 27.09.2013

B.N.Mahapatra, J. This appeal has been directed at the instance of the United India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 challenging the Award dated 09.05.2007 passed by the Member, 2nd Motor Accidents Claims Tribunal (hereinafter referred to as 'the Tribunal'), Northern Division, Sambalpur in Misc. (A) Case No.267 of 2002(S).

2. Respondent Nos. 1 to 4, who were the petitioners/claimants before the Tribunal, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act'). Claimants' case before the Tribunal in a nutshell is that the deceased-Alok Kumar Naik was

serving as an Engineer in Indian Petro-Chemicals Limited (for short, 'IPCL') and was getting monthly salary of Rs.24,000/- at the time of death. On 08.07.2002 at about 3.30 PM, while returning home with his colleagues from his place of work at Bharuch, Gujarat in a Bus bearing Registration No.GJ-6W-5131 at Dhahaj road near a Petrol Pump, a truck bearing Registration No.GJ-17T-7084 came in a high speed from the opposite direction and hit the bus on its face, as a result of which many persons were severely injured including the deceased. The deceased was removed to a hospital at Bharuch where he was declared dead. Further case of the claimants was that the deceased was 23 years old at the time of accident. With these facts the claimants filed the claim petition claiming compensation of Rs.50,00,000/-.

3. Owners of the bus and the truck (opposite parties 1 and 2) did not appear before the Tribunal after notice and the Tribunal directed to hear the claim petition ex-parte as against them. The United India Insurance Company Limited (for short 'the Insurance Company'), which is the insurer of both the vehicles, i.e., the bus and the truck involved in the accident, appeared as opposite party No.3 and filed its written statement. Before the Tribunal, though the Insurance Company admitted itself to be the insurer of both the vehicles and the policies were to be valid on the date of accident but denied its liability to pay the amount of compensation on the ground that the drivers were not having valid licence. It also challenged the quantum of compensation claimed as high and excessive.

4. On the pleadings of the parties, learned Tribunal framed following four issues:

- (a) Whether, the claim petition is maintainable?
- (b) Whether, Alok Kumar Naik died due to accident involving Bus No. GJ-6W-5131 and Truck No. GJ-17T- 7084 which took place on 8.7.2002 ?
- (c) Whether, the accident occurred due to rash and/or negligent driving by the drivers of both the vehicles?
- (d) Whether the petitioners are entitled to compensation? If so, to what extent and from which of the opp. parties ?

5. After taking into consideration both oral and documentary evidence, learned Tribunal held that death of the deceased was caused due to rash and negligent driving of both the vehicles and the claimants being the widow, parents and children of the deceased are entitled to get compensation. The deceased was serving as a Senior Manager in IPCL at Bharuch. The annual income of the deceased from salary was Rs.2,68,027/- at the time of accident. The Tribunal further held that at the time of death, the deceased was 29 years old. The learned Tribunal further held that the deceased would have got promotion on 31.03.2006 and his income at that time would have been Rs.4,68,662/- and on 01.04.2008 his annual salary would have been Rs.7,90,942/-. Thus, taking into consideration his qualification, nature of service, age and future prospects, learned Tribunal determined the annual income of the deceased at Rs.4,00,000/-. Deducting 1/3rd towards personal expenses, loss of dependency per annum was determined at Rs.2,66,667/. Applying 18 multiplier the learned Tribunal determined the amount of compensation at Rs.48,00,006/-. Learned Tribunal has also awarded Rs.10,000/- towards loss of consortium, Rs.2,000/- loss of estate and Rs.5,000/- for funeral expenses. Thus, total amount of compensation

was determined at Rs.48,17,000/-. Learned Tribunal held that though a plea is taken by opp. party no.3 that the drivers of both the vehicles had no driving licence, the same could not be proved. On the other hand, police papers filed and admitted in evidence proved that both the drivers had valid driving licence. Leaned Tribunal further held that the opposite party-Insurance Company, i.e., the United India Insurance Company Ltd. being the insurer of both the vehicles, is liable to pay the amount of compensation and accordingly directed the Insurance Company to pay the amount of compensation along with 6% interest per annum from the date of filing of the claim application till realization. Hence, the present appeal.

6. Despite issuance of notice to all the respondents none appears except respondent Nos. 1 to 4.

7. Mr. A.K.Mohanty, learned Senior Advocate appearing for the appellant-Insurance Company submitted that the Tribunal without appreciating the case and evidence on record has awarded the compensation of Rs.48,17,000/- in a most arbitrary and whimsical manner. The Tribunal has gone beyond its jurisdiction by taking into consideration the future notional income and promotional prospects of the deceased as the same is not permissible under law. Since the accident took place on 08.07.2002 and the deceased died in that accident by which time his annual salary was Rs.2,68,027/-, the Tribunal is not correct in determining the annual income of the deceased at Rs.4,00,000/-. In view of the decision of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport**

Corporation, (2009) 2 TAC 677, the appropriate multiplier should have been 17 instead of 18 as applied by the Tribunal. In view of the decision of the Hon'ble Supreme Court in the case of *Oriental Insurance Company Ltd. Vs. Jashuben*, 2008 AIR SCW 2393 no future prospects should have been taken into consideration for the purpose of determining the gross amount of compensation. According to Mr.Mohanty, Rs.30,47,139/- would be the just and proper compensation as fixed deposit of Rs.30,00,000/- would earn interest of Rs.2,40,000/- whereas family contribution of the deceased was Rs.1,78,685/- at the time of his death.

8. Mr.D.Pati, learned counsel appearing on behalf of respondents 1 to 4 submitted that PW-3 Manager, Human Resource, IPCL stated about income of the deceased; police papers submitted in evidence remained unchallenged, the deceased was highly qualified and had a bright future; Exhibit No.2 is salary certificate which reveals that the deceased was to get promotion on 31.03.2006 and 01.04.2008 and his annual income would have been Rs.4,68,662/- and Rs. 7,90,942/- respectively. Therefore, the Tribunal is fully justified in determining the annual income of the deceased at Rs.4,00,000/- and amount of compensation at Rs.48,00,000/- besides Rs.17,000/- towards loss of consortium, loss of estate and funeral expenses. Concluding his argument Mr. Pati submitted for dismissal of appeal.

9. On the rival contentions of the parties, the only question that falls for consideration by this Court is whether the learned Tribunal is justified to determine the amount of compensation at Rs.48,17,000/-? If not, then what would be the just compensation in the instant case?

10. Undisputedly the deceased-Alok Kumar Naik was serving in IPCL as an Engineer with monthly salary of Rs.24,000/- as on the date of accident, i.e., 08.07.2002; he was 29 years of age; the appellant-Insurance Company which is the insurer of both the vehicles was held liable by learned Tribunal to pay the compensation to the claimants. These facts/findings of the Tribunal have not been challenged before this Court by the appellant-Insurance Company.

11. Law is well-settled that if the deceased is in a permanent job, his future prospects should be taken into consideration for the purpose of determination of the compensation. Hon'ble Supreme Court in the case of **Sarla Verma (supra)** held as under:

“Question (i)-Addition to income for future prospects:

20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.

21. In **Susamma Thomas** this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs.2000 as gross income before deducting the personal living expenses.

22. The decision in **Susamma Thosmas** was followed in **Sarla Dixit v. Balwant Yadav** where the deceased

was getting a gross salary of Rs.1543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs.3000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs.2200 per month.

23. In **Abati Bezbaruah v. Geological Survey of India** (2003)2 SCC 148) , as against the actual salary income of Rs.42,000 per annum (Rs.3500 per month) at the time of the accident, this Court assumed the income as Rs.45,000 per annum having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In **Susamma Thomas** this Court increased the income by nearly 100%, in **Sarla Dixit** the income was increased only by 50% and in **Abati Bezbaruah** the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

12. As regards application of multiplier the Hon'ble Supreme Court in **Sarla Verma** case (supra) held as under:

“42 We therefore hold that the multiplier to be used should be as mentioned in Column (4) of

the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

Thus in the present case, the deceased being 29 years old at the time of accident, the appropriate multiplier would be 17.

13. As regards entitlement of claimants towards ‘loss of estate’, ‘funeral expenses’ and ‘loss of consortium’, the Hon’ble Supreme Court in *Sarla Verma case (supra)* held as under :

“50. In addition, the claimants will be entitled to a sum of Rs.5000 under the head of “loss of estate” and Rs.5000 towards funeral expenses. The widow will be entitled to Rs.10,000 as loss of consortium.”

14. Mr. Mohanty seriously contended that without taking into account the future prospects of the deceased for the purpose of determining the compensation it would be just and proper to determine the amount of compensation at Rs.30,47,139/- because if Rs.30 lakhs will be kept in fixed deposit that will earn annual interest of Rs.2,40,000/- whereas annual family contribution of the deceased was Rs.1,78,685/- at the time of death. This contention of Mr. Mohanty is wholly misconceived because while determining the amount of compensation, the future prospect of the deceased has to be taken into consideration if the deceased was in a permanent job with future

promotion and increment of salary, as held by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra).

15. Since Mr. Mohanty, learned counsel relied upon the decision of the Hon'ble Supreme Court in the Sarla Verma case, for the purpose of applying multiplier, it would be just and proper to determine the amount of compensation in the light of the said judgment of the Hon'ble Supreme Court.

16. As regards the annual income of the deceased, the learned Tribunal has taken into consideration the appointment order, salary certificate and evidence of PW-3, the Manager (HR) of the Company who is the most competent to say about the income of the deceased. In his evidence, PW-3 has stated that the annual salary of the deceased late Alok Kumar Naik was Rs.2,68,027/-. The deceased being 29 years, 50% of the annual salary is taken towards future prospects. Thus, the total annual income comes to Rs.4,02,041/-. Deducting $1/3^{\text{rd}}$ towards personal expenses and applying 17 multiplier, the amount of compensation comes to Rs.45,56,460/- (Rs.04,02,041/- x $2/3$ x 17). The claimants shall be further entitled to Rs.20,000/- (Rs.5,000/- towards loss of estate, Rs.5,000/-for funeral expenses and Rs.10,000/- for loss of consortium). Thus, the claimants are entitled to total compensation of Rs.45,76,460/- (Rs.45,56,460/- + Rs.20,000/-).

17. In view of the above, the appellant-United India Insurance Company Ltd. is directed to deposit Rs.45,76,460/- along with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of payment before the Tribunal within eight weeks from

today. The Tribunal is directed to disburse the same in the manner it has directed in its award.

18. On production of receipt showing deposit of the amount of compensation and interest before the Tribunal as directed above, the Registrar (Judicial) shall refund the statutory amount and the amount of compensation and interest deposited by the appellant before him pursuant to order of this Court dated 20.11.2009 along with the interest accrued thereon to the appellant-United India Insurance Co. Ltd.

19. The Appeal is allowed to the extent indicated above.

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B.N.Mahapatra, J