

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

MAC. App. No. 42 of 2022

Smti. Puspita Kuri & 2 Others

.....Appellant(s)

VERSUS

Shri Subrata Dey and Another

.....Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	None.
L.R. Copy	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

22/08/2023

Heard Mr. S. Lodh, learned counsel appearing for the appellants.
None appears for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 21.03.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.1, Udaipur in connection with T.S. (MAC) 21 of 2018 for enhancement of the compensation.

[3] The case of the petitioners, the appellants herein, as discernible from the claim petition is that on 19.12.2017 at around 1800/1830 hours the husband of the appellant No.1 namely, Panna Lal Kuri (now deceased) was proceeding towards Damdama Bazar from his house on foot keeping extreme left side of Agartala-Sabroom NH-44. When he reached near Damdama Bazar, suddenly, he was dashed by a vehicle bearing No.TR-08-1860 (Tipper Truck) from back. As a result, he fell on the road and sustained fatal injuries on his head and other parts of his body. Soon after the accident he was taken to Sabroom hospital where after examination, the attending physician declared him dead. It is alleged by the appellants that the accident occurred due to rash and negligent driving of the vehicle No.TR-08-1860 (Tipper Truck) by its driver. A police case bearing No. 70/2017 under Sections 279/304 Part-II of IPC was registered at Sabroom P.S. based on the FIR submitted by one Ranjit Kuri, cousin of the deceased. It is stated by the appellants that at the time of death the deceased was an energetic and healthy man of 65 years and was a pension holder and also used to do business

from which his earning was Rs.10,000/- per month and the deceased was the only bread earner of their family. Finally, the appellants claim compensation to the tune of Rs.25,60,000/-.

[4] On receipt of the claim petition, the same was registered as Case No. T.S. (MAC) 21 of 2018. After registration of the case, the learned Court below issued summons upon the respondents and on receipt of the summons, the respondents appeared before the learned Court below and submitted their respective written objections.

[5] To prove the case, the claimants adduced two witnesses and proved eight documents and on the other side the respondent No.1 adduced one witness and produced vehicular documents and on behalf of the respondent No.2 no witness was examined and no document was produced. After hearing the parties, the learned Court below vide impugned judgment and award dated 21.03.2022 awarded Rs.2,84,210/- only in favour of the appellant No.1 and also held that as the appellants No.2 & 3 are adult and they are not dependent on the income of the deceased. Hence, they are not entitled to any compensation.

[6] The learned tribunal after considering the facts and circumstances of the case and also the submission made on behalf of the parties has observed, inter alia:

“18. In the result, it is ordered that, the petitioner No.1 is entitled to compensation of Rs.2,84,210/- (Rupees Two Lac Eighty-four Thousand Two Hundred Ten) only in total. The O.P. No.2, Shriram General Insurance Company Ltd., insurer of vehicle No.TR-08-1860 (Tipper Truck) is directed to make the payment of compensation to the petitioner within two months from today along with interest thereon @ 7.5% per annum from the date of filing of claim petition i.e. from 03.04.2018 till payment/realization of the same.

19. Order regarding manner of disbursement of the compensation amount to the petitioner shall be passed as per the guidelines of the Hon'ble High Court of Tripura after deposit of the awarded amount by insurance company.”

[7] Being highly aggrieved by and dissatisfied with the impugned judgment and award passed on 21.03.2022 by the learned Member, Motor Accident Claims Tribunal (Court No.1) in T.S. (MAC) 21 of 2018, the appellants- have preferred the present appeal.

[8] Mr. S. Lodh, learned counsel appearing for the appellants has submitted that the learned Court below at the time of assessing the compensation committed serious error and hence, the impugned judgment and award is liable to be interfered with. He has further submitted that after the death of the deceased, the appellant No.1 would get family pension of Rs.2,960.10/- and hence, loss of dependency is Rs.6,906.90/- and on the basis of that, the learned Court below assessed the compensation and also deducted half as living expenses of deceased.

[9] It has been further contended that the loss of income of the family is not of Rs.6,906.90/-, it is Rs.9,867/-. If the learned Court below deducted 50% as living expenses of the deceased, then Rs.2,960.10/- cannot be deducted from the income of the family. Thus, the learned Court below at the time of assessment has committed serious error in assessing the loss of income of the family and hence, the impugned judgment and award is liable to be interfered with.

[10] In support of his contentions, he has placed his reliance on a decision of the Apex Court in ***Lal Dei and Others v. Himachal Road Transport***, reported in (2007) 8 SCC 319, wherein, the Court has held as under:

“4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In [Helen C. Rebello v. Maharashtra SRTC 1999 1 SCC 90](#) this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the appellants would be entitled for an amount of Rs 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.”

[11] In another case reliance has been placed by Mr. S. Lodh, learned counsel appearing for the appellants ***Helen C. Rebello (Mrs) and Others v. Maharashtra State Road Transport Corporation and Another***, reported in (1999) 1 SCC 90, wherein, the Hon’ble Apex Court has held as under:

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.”

[12] In view of above submissions and the principle as laid down by the Hon'ble Apex Court, let us revisit the material evidence once again. The appellants' side also examined one Khokan Das who claimed himself to be the eye witness of the accident and is also one of the neighbors of the deceased. He stated that on 19.12.2017 at around 1800/1830 hours he was present in front of a shop nearby the place of accident. At that time the deceased Panna Lal Kuri was proceeding towards Damdama Bazar on foot from his house and near the Bazar he was dashed by a vehicle bearing No.TR-08-1860 (Tipper Truck) from back causing grievous injury on his head and other vital parts of body. He was taken to Sabroom Hospital where the doctor after examination declared him dead. He stated that the accident

took place due to rash and negligent driving of the vehicle No.TR-08-1860 (Tipper Truck) by its driver.

[13] It reveals from the record that at the time of accident the driver of the vehicle No.TR-08-1860 (Tipper Truck) had valid driving licence and it had got valid registration certificate along with all other documents and the vehicle was duly insured with the Insurance Company covering the date of accident and as such, the liability of paying compensation is to be shouldered by the Insurance Company. None of the parties challenged the maintainability of the proceeding. The death of Panna Lal Kuri allegedly occurred due to rash and negligent driving of the driver of the offending vehicle.

[14] As it is held that the husband of the appellant No.1 died due to road traffic accident out of use of the offending vehicle, so except appellant Nos.2 and 3, the appellant No.1 is certainly entitled to some compensation. As regards appellant Nos.2 and 3 it appears that they are the sons of the deceased and their present age is 49 and 40 years as is revealed from the survival certificate (Ext.6). The accident occurred in the year 2017 and the said survival certificate was issued in the year 2021. So, at the relevant time of accident both of them were very much adult. It is hard to believe that the adult persons like the appellant Nos.2 and 3 were dependent upon their septuagenarian father.

[15] The learned Court below at the assessing monthly income of the deceased has failed to appreciate the principle laid down by the Hon'ble Apex Court wherein, it has been contended that the tribunal could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. The family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. Thus, the income of the family is not Rs.6906.90/- as assessed by the Court below it should be Rs.9867/-. As per guideline given by the Apex Court in Sarala Verma and Ors. v. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121, the

multiplier 5 is adopted to determine the compensation and the amount comes to Rs.5,92,020/- [Rs.9867x12x5].

[16] It has been observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act. Provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount comes within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. So the amount would be Rs. 5,92,020/- and with this amount other amounts as assessed by the learned Court below in different heads shall remain unaltered.

[17] Since it is a beneficial legislation, it is settled principle of law and the Apex Court in number of matters held that the awarded amount need not be restricted to the amount i.e. claimed by the claimant, it can vary depending on the facts and circumstances of the case either reducing the claim or increasing the claim.

[18] With the above observations and modifications, the present appeal filed by the appellants, stands allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the award accordingly.

JUDGE

A. Ghosh

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