

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.751 of 2016

(From the judgment dated 25th February, 2016 passed by Shri B.K. Mishra, 1st M.A.C.T., Cuttack in M.A.C. No.151 of 2012)

Sabita Jena

.....

Appellant

Versus

Lelin Jena and another

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant	:	Mr. Satyabhusan Das, Advocate
For Respondents	:	Mr. Subrat Satpathy, Advocate for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. Learned 1st MACT, Cuttack in the impugned judgment dated 25th February, 2016 has directed for payment of compensation to the tune of Rs.34,41,408/- to the claimant on account of serious injuries sustained in the motor vehicular accident dated 26th January, 2012.

2. The amount of compensation has been calculated as follows:-

Loss of future income	:	Rs.33,21,408/-
Attendant Cost	:	Rs.15,000/-
Medical Expenditure	:	Rs.50,000/-

Mental agony, pain and Suffering and loss of amenities :	Rs.50,000/-
Cost of litigation :	Rs.5,000/-
Total :	Rs.34,41,408/-

3. The injured – claimant represented through his wife has come up in appeal praying for enhancement. Dissatisfied with the compensation amount, it is submitted on behalf of the claimant that the learned Tribunal did not grant any amount towards future prospects and further, the amount granted towards loss of amenities of life is inadequate. It is also contended that no future medical expenses and attendant cost has been granted by the learned Tribunal.

4. Conversely, it is submitted by the insurer–Respondent No.2 that the wife of the injured–claimant has got rehabilitation appointment by the employer for permanent incapacitation of the claimant and in addition to the same, the claimant is granted pension of Rs.4,685/- per month. It is thus submitted that since the wife has been rehabilitated in service in place of the injured–claimant, no compensation for future prospects can be granted.

5. The facts of the case regarding accident, the liability of the insurer, the age, income and rehabilitation appointment of the wife as well as pension of the injured–claimant are not disputed. The learned Tribunal taking the age of the claimant as 34 years, has applied multiplier ‘16’ for computing the loss of income. Admittedly the claimant sustained 80% permanent disability due to traumatic paraplegia resulting 100% loss of earning.

6. The issue falls for determination is whether the claimant is entitled to get addition of future prospects to the loss of his future earnings?

7. For determining the same the rehabilitation employment of the wife of the claimant and the admitted receipt of monthly pension plays important role.

8. While canvassing their respective arguments, the claimant-Appellant relied on the decision of the Supreme Court in the case of *Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others*, 2016 (4) T.A.C. 149 (S.C.). Learned counsel for the insurer relied on the decision of the Supreme Court in the case of *Bhakra Beas Management Board vs. Kanta Aggarwal and others*, 2008 (3) T.A.C. 661 (S.C.).

9. The Supreme Court in the case of *Shashi Sharma and others* (supra) has dealt with the decision in *Bhakra Beas Management Board* (supra). In the case of *Shashi Sharma and others* (supra), the insurer has preferred the challenge before the Supreme Court against the decision of the Punjab and Haryana High Court which observed that the amount receivable by the dependents of the deceased under the Haryana Compassionate Assistance to the Dependent of the Deceased Government Employees Rules, 2006 cannot be deducted from the quantum of compensation fixed by the learned Tribunal. In that case, the deceased, who died in a motor accident dated 24th October, 2010, was an employee of Haryana Government and his dependents received certain amount under the Haryana Compassionate Assistance to the Dependent of the

Deceased Government Employees Rules, 2006. The Supreme Court by analyzing the scope and intent of the said 2006 Rules has observed as follows:

“13. In the case of ***Bhakra Beas Management Board*** (supra), ostensibly, it may appear that a departure has been made in allowing deduction of the pecuniary advantage received by the claimants from other source on account of death of her husband. However, on a closer analysis of the said decision, two aspects become prominent. *Firstly*, the grievance of the appellant Board was that the claimants had filed an appeal before the High Court for enhancement of compensation of amount, which was still pending. However, the appeal preferred by the Board against the same decision was dismissed by the High Court. The grievance of the appellant was essentially about the inappropriate approach of the High Court in dismissing its appeal. That can be discerned from the observation in paragraph 13 of the reported decision. From the observation found in para 14 of the reported decision, it is seen that the High Court judgment has been held to be clearly unsustainable. That must be understood as disapproving the approach of the High Court in dismissing the appeal filed by the appellants, though cross appeal filed by the claimants for enhancement of compensation amount was pending before it. The second aspect, is that, the Court, to do complete justice between the parties and for bringing quietus to the long pending litigation (14 years) between them, including to dispose of appeal of the claimants pending before the High Court, passed an order for full and final settlement of all the claims *inter partes*. That can be discerned from paragraphs 13 and 14, which read thus: xxx xxx

14. Thus understood, it is not an authority of having taken a contra view than the view expressed in ***Helen C. Rebello and Patricia's*** case. As a matter of fact, in para 11 of the reported decision, paragraphs 32 to 34 of ***Helen C. Rebello's*** case has been reproduced in its entirety. No

observation is found in the entire decision, to have doubted the correctness of the dictum in ***Helen C. Rebello*** and ***Patricia's*** case.

15. Be that as it may, the term compensation has not been defined in the Act of 1988. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. *Firstly*, the measure of compensation must be just and adequate; and *secondly*, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the Act of 1988 makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word “just” means-fair, adequate, and reasonable. It has been derived from the Latin word “*Justus*”, connoting right and fair. In para 7 of ***State of Haryana & Anr. v. Jasbir Kaur & Ors.***, (2003) 7 S.C.C. 484 : 2003 (3) T.A.C. 569, it has been held that expression “just” denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.***, (2009) 6 S.C.C. 121 : 2009 (2) T.A.C. 677, this Court has observed that the compensation “is not intended to be a bonanza, largesse or source of profit”. That however may depend upon facts and circumstances of each case, as to what amount would be just compensation.

16. The principle discernable from the exposition in ***Helen C. Rebello's*** case (supra) is that if the amount “would be due to the dependants of the deceased even otherwise”, the same shall be not be deductible from the compensation amount payable under the Act of 1988. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the Act of 1988. The component of quantum of “loss of income”, *inter alia*, can be “pay and

wages” which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006-to grant compassionate assistance by way of *ex-gratia* financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the Act of 1988.

17. A perusal of the scheme of Rules of 2006 would reinforce the position that the dependents of the deceased Government employee are suitably compensated for a specified period by way of financial assistance in the form of *ex-gratia* payment on compassionate grounds equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Here, we may advert to the recital of the Rules of 2006, which reads thus:

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21. The claimants are legitimately entitled to claim for the loss of “pay and wages” of the deceased Government employee against the tortfeasor or Insurance Company, as the case may be, covered by the first part of Rule 5 under the Act of 1988. The claimants or dependents of the deceased Government employee (employed by State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5-“pay and allowances”, which are receivable by them from employer (State) under Rule 5 (1) of the Rules of 2006. In that, if the deceased employee was to survive the motor accident injury, would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of “pay and wages” of the deceased

Government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants. Somewhat similar situation has been spelt out in Section 167 of the Motor Vehicles Act, 1988, which reads thus:

“167. *Option regarding claims for compensation in certain cases.*—Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either or those Acts but not under both.” (Emphasis supplied)

22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of *ex-gratia* financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of pay and allowances in the form of *ex-gratia* financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance

equivalent to “pay and other allowances” that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 591) of the Rules, is the total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in *Helen C. Rebello* and *Patricia Jean Mahajan’s* cases (supra).”

10. Here in the instant case the admitted fact remains that due to the injuries sustained in the accident by the claimant and his incapacitation for further service he was allowed to be retired under the V.R. Scheme and the wife of the claimant has been given rehabilitation appointment. The nature and scope of such rehabilitation scheme under which the wife got employment has not been brought on record by either party. But one thing is clear that had the claimant not been permanently incapacitated, the question of employment of the wife would not have arisen. It is not the case where the claimant has been refused for compensation of loss of future earnings, but it is a case where the claimant demands for addition of future prospects to the loss of earnings. The wife has got employment only for the reason of permanent incapacitation of her husband (claimant), where she would be entitled for future prospects

in her employment undisputedly. Thus the question of grant of future prospects to be added to the compensation does not arise. The learned Tribunal has rightly observed to discard the same by holding that there was no loss of future pecuniary prospects in view of the rehabilitation employment of the wife and the monthly grant of pension to the injured-claimant. Here it is to be remembered that no double benefit should be passed on to the claimant in the matter of award of compensation. When the wife has been rehabilitated by employment only for the reason of incapacitation of the husband due to the accident which would not be otherwise due to the wife, the same becomes a considerable factor for determining just compensation. Thus no illegality is seen in the order of the learned Tribunal in this regard.

11. Next coming to see the other challenge of the claimant with regard to inadequate grant of compensation towards loss of amenities in life particularly, considering the expectations and pleasures of life of the injured – claimant keeping in view his age on the date of accident, this Court deems it fit to enhance the amount to Rs.2,00,000/- further in addition to the amount granted by the learned Tribunal.

12. Regarding prayer for enhancement of the amount towards future medical expenses and future attendant cost, it is seen from record that no such evidence has been brought to that effect. Neither the wife (P.W.1) nor any other witness has said anything with regard to the same. So in absence of specific evidence to that effect such prayer in favour of the claimant cannot be allowed.

13. In the result, the appeal is disposed of with a direction to the insurer-Respondent No.2 to deposit the further consolidated sum of Rs.2,00,000/- before the learned Tribunal within a period of two months from today, which shall be disbursed in favour of the claimant.

(B.P. Routray)
Judge

