National Insurance Co. Ltd vs Shyam Singh & Ors on 4 July, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3231, 2011 AIR SCW 4126, 2011 AAC 2410 (SC), 2011 (4) AIR JHAR R 374, AIR 2011 SC (CIVIL) 1871, 2011 (7) SCC 65, (2011) 3 KER LJ 6, (2011) 49 OCR 919, (2011) 3 PAT LJR 238, (2011) 4 CGLJ 2, (2011) 3 ACC 291, (2011) 4 CIVLJ 756, (2011) 4 PUN LR 112, (2011) 3 TAC 625, (2011) 2 WLC(SC)CVL 465, (2011) 3 JCR 232 (SC), (2011) 3 ACJ 1990, (2011) 6 SCALE 723, (2011) 8 MAD LJ 551, (2011) 4 ALL WC 3942, (2011) 3 CURCC 91, 2011 (3) SCC (CRI) 28, 2011 (3) KLT SN 52 (SC)

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Bench: Anil R. Dave, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4921 OF 2011

[Arising out of SLP (C) No. 21418 of 2010]

National Insurance Co. Ltd. .... Appellant

Versus

Shyam Singh and Ors. .... Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 15.03.2010 passed by the High Court of Madhya Pradesh at Jabalpur in Miscellaneous Appeal No. 4867 of 2009, whereby the High Court had partially allowed the appeal filed by the Respondent No. 3 and 4 herein, against the award dated 28.08.2009 passed by the Second Additional Motor Accident Claims Tribunal, Satna, Madhya Pradesh and enhanced the compensation awarded by the Tribunal.

3. The factual matrix of the case is that Respondent No. 3 and 4 are parents of one Yogendra Kumar Pathak, who was 19 years of age and on 01.11.2007 while on his way to his village Kor Gaon, he alongwith his sister were travelling in jeep No. MP 19-A 930. The said jeep wasbeing driven by Respondent No. 1 and met with an accident near Dhal Factory General Road due to rash and negligent driving by the Respondent No. 1which resulted in his death on the spot.

FIR was lodged at Police Station, Civil Lines, Satna against the driver under Sections 229 and 304-A of the Indian Penal Code. His dead body was taken to his village from the hospital on payment of Rs. 800/- and amount of Rs.

25000/- was spent on cremation.

4. It was stated in the claim petition that before his death, the deceased was a young man of robust health and was working as mechanical fitter in Priya Engineering Prism Cement Factory on the salary of Rs. 4500/- per month and in total was getting Rs. 6000/- a month inclusive of salary and over time allowance and was supporting his parents financially.

After his death, Respondents No. 3 and 4 have been rendered without any financial support and have been deprived of the association and pleasure of having a family and grand children in future.

5. The M.A.C.T., Satna, came to a finding that the deceased was earning Rs. 3000/- per month and deducted 50 % therefrom towards personal expenses, as he was a bachelor.

Considering the age of the parents which was 56 and 55 years, applied the Multiplier of 9, and awarded a total compensation of Rs. 1,72,000/- (Rs. 1,62,000/- towards the loss of dependency + Rs. 10,000/- towards conventional heads) along with 6 % interest per annum from the date of claim petition. Being aggrieved, the Respondent No. 3 and 4 preferred miscellaneous appeal No. 4867 of 2009 before the High Court for enhancement of amount of compensation stating that the income of the deceased was Rs. 4500/- and not Rs. 3000/- as determined by the Tribunal, and a multiplier of

16 instead of 9 was supposed to be applied. The High Court relying on the judgment of this Court in the case of Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another (2009) 6 SCC 121, enhanced the multiplier to 18 instead of 9 and granted expenses to the tune of Rs. 15000/- under conventional heads. Accordingly, the High Court enhanced the amount of compensation from Rs. 1,72,000/- to Rs. 3,39,000/-

6. The learned counsel appearing for the appellant submitted that the High Court had failed to correctly apply the ratio laid in the case of Sarla Verma case (supra.). It was further contended that this Court has repeatedly held that in case where an unmarried young man dies, the average age of the parents will be taken for determining the multiplier and not the age of the deceased. In the aforesaid case, it has been clearly stated that for the age group of 56-60 years the multiplier should be 8, as has been correctly applied by the Tribunal by taking the average age of the Respondents 3 and 4 who are 55 and 56 years of age. It was further submitted that assuming, though not admitting, even if the age of the deceased is to be considered for determining the multiplier, the correct multiplier should have been 16 instead of 18, which is applicable to the age group between 15 to 20 years.

7. On the other hand, the learned counsel appearing for the Respondents No. 3 and 4 supported the impugned judgment and submitted that the High Court correctly enhanced the multiplier keeping in view the age of the deceased which was 19 years.

8. The assessment of damages and compensation takes into account a number of imponderables. This has been held by this court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors. (AIR 1994 SC 1631) as: -

> "The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g. the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together etc."

9. This Court in the case of Vijay Shankar Shinde and Ors.

v. State of Maharashtra (2008) 2 SCC 670, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:

> "6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie AIR 2005 SC 2157, it is clear that the choice of

multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.

7. The learned Counsel relying on the 2nd Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that Section 163A was brought on the Statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens u/s 140 or 166 were really cumbersome and time consuming. Therefore as a part of social justice, a system was introduced via Section 163A wherein such burden was avoided and thereby a speedy remedy was provided. The relief u/s 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including Deepal Girishbhai Soni v. United India Insurance Co. Ltd. AIR 2004 SC 2107. 2nd Schedule is to be used not only referring to age of victim but also other factors relevant therefore. Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in U.P. State Road Transport Corporation v. Trilok Chandra (1996) 4 SCC 362, Ahmedi, J. (As the Chief Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide. It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by the 2nd Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants. That precisely has happened in this case. Age of the parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim and Ors. AIR 2008 SC 103. In our considered opinion, the Courts below rightly struck the said balance."

10. In our view, the dictum laid down in Vijay Shankar Shinde (supra) is applicable to the present case on all fours.

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.

11. Thus, the present appeal is allowed to the aforesaid extent and the award passed by the Tribunal is restored. No costs.

.....J [Dr. Mukundakam Sharma] .....J [Anil R. Dave] New Delhi, July 4, 2011.