

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 138 of 2013

The National Insurance Co. Ltd., East Singhbhum..... Appellant
Versus

1. Babla Bagchi
2. Dalia Bagchi
3. Shoubhik Bagchi
4. Aditya Jana

.... Respondents

With
Cross Objection No. 8 of 2020

1. Babla Bagchi
2. Shoubhik Bagchi

.... Cross-objectors

Versus

1. The National Insurance Company Limited
2. Aditya Jana

..... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

(In M.A. No.138 of 2013)

For the Appellant : Mr. Alok Lal, Advocate
For the respondent no.2 : M/s Arvind Kr. Lall, Nagmani Tiwari
& J.N Upadhyay, Advocates

(In C.O. No. 8 of 2020)

For the Appellant :Mr. A.K. Lall, Advocate
For the respondents :Mr. Santosh Kumar, Advocate

C.A.V. ON 11.02.2022

PRONOUNCED ON 17 / 02 / 2022

1. The National Insurance Company the insurer of the stationary truck against which the Alto car crashed into, has preferred the instant appeal against the award of compensation passed in Compensation Case No.28/2010 under Section 166 of the MV Act, for the death of Jayanta Bagchi in a motor vehicle accident who was the owner cum driver of the vehicle at the relevant time of accident.

2. The present appeal has been preferred on the ground that it was at best a case of contributory negligence but compensation of award has been made against the insurer of the truck without even impleading the insurer of Maruti Alto Car. Learned Court below has misdirected itself to rely upon the charge-sheet filed against the driver of the truck. It is pleaded on behalf of the Insurance Company that principle of *res ipsa loquitor* should have been applied considering the manner of accident where the Alto car rammed into a stationary truck. The impact of accident was so intense that it resulted in the death of not only the driver but also two occupants of the car. Thus, the liability should have been apportioned

between the insurer of the car and the truck both and not solely on the insurer of the truck.

3. Learned Tribunal in this case has recorded a finding of fact that the accident took place due to wrong manner of parking of the truck without a tail light and compensation has been awarded solely against the insurer of the truck. It has been noted in the Judgment that eye witness AW 3 deposed that the truck was parked on the middle of the road without giving any indication light or anything else. Driver of the Alto car could not spot the truck and crashed into the truck. The Tribunal has referred to the Road Regulations Act 1989 which provides that every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or inconvenience to other road users. No contrary evidence has been led on behalf of the Insurance Company to make out a case of contributory negligence on the part of the driver of the offending vehicle. In a somewhat similar case *Archit Saini v. Oriental Insurance Co. Ltd.*, (2018) 3 SCC 365 where the driver of the Maruti car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side and the Gas Tanker being parked in the middle of the road without any indicator or parking lights and the Maruti car could not see the parked truck due to flash light of the vehicles coming from the opposite direction, the Hon'ble Supreme Court set aside the order of the Tribunal that it was a case of contributory negligence and affirmed the order of Tribunal that negligence was on the part of the driver of the Gas Tanker on the evidence on record.

Under the circumstance, I do not find any material to disturb the finding of fact recorded by the Tribunal wherein the liability of accident has solely been fixed on the truck which was parked on the road without any tail light or indicator.

4. Cross Objection No. 8 of 2020 has been preferred by the claimants Babla Bagchi wife of the deceased Jayanta Bagchi and her son the Cross-Objector-2 for enhancement of compensation awarded in compensation case no. 28 of 2010 .The cross-objection has been preferred mainly on the following grounds:

- a. Compensation under the conventional heads has not been allowed as per the settled law on the point.

b. The claimants are entitled to total compensation of Rs.36,91,000/- taking the Gross monthly income of the deceased of Rs.15345/-

c. The interest has been allowed at the rate of 6% which ought to have been 9% per annum from the date of application.

d. The amount awarded under Section 140 of the M.V. Act ought not to have been ordered to be deducted from the total compensation amount, in view of Sections 144 and 141 of the M.V. Act.

5. The cross-objection has strongly been contested by the learned Counsel on behalf of the Insurance Company on the ground that it has been filed after period of limitation.

Whether a cross-objection can be considered after the period of limitation or not has been answered in ***Mahadev Govind Gharge v. LAO, (2011) 6 SCC 321*** wherein it has been held :

*“The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public and to avoid multiplicity of litigation. In ***Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy [(2001) 8 SCC 115]*** this Court expressed similar view in relation to amendment of pleadings. The principles stated in that judgment may aptly be applied generally in relation to the interpretation of provisions of the Code. Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. For example, under Order 41 Rule 22 of the Code, cross-objections can be filed at any subsequent time, even after expiry of statutory period of one month, as may be allowed by the court. Thus, it is evidently clear that there is no complete or indefeasible extinguishment of right to file cross-objections after the expiry of statutory period of limitation provided under the said provision. Cross-objections within the scheme of Order 41 Rule 22 of the Code are to be treated as separate appeal and must be disposed of on same principles in accordance with the provisions of Order 41 of the Code.”*

It is settled law that with an object of awarding just and fair compensation the appellate court can enhance compensation even if

appeal or objection has not been filed. It has been held in

Ranjana Prakash v. Divl. Manager, (2011) 14 SCC 639 : (2012) 4 SCC (Civ) 994 “where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer.”

From the above there cannot be a shade of doubt that while considering the appeal preferred by the Insurance Company this Court is not fettered from adjudicating on the quantum of compensation to see if the award is just fair and reasonable.

6. Here in the present case a compensation of Rs.19,27,000/- has been awarded on the basis of Ext 1 to 1/6 which is the original salary slip from June to December, 2009. The learned Tribunal has accepted monthly income of Rs 15000/-

The compensation amount shall accordingly work out as per the table given below:

Annual Income 15,000x12	Rs 1,80,000/-
Annual income after deduction of income tax of 2060	Rs. 1,78,000 approx
Annual dependency after deducting 1/3 rd on the living and personal expenses of the deceased	Rs. 1,18,666
Taking multiplier of 15 considering the age of the deceased to be 36years	Rs.1,18,666 x 15 = Rs 17,79,990/-
Future Prospect @ 50%	Rs. 8,89,995/-
Conventional head	Rs. 77,000/-
Total	Rs. 27,46,985/-

The claimants shall therefore be entitled to compensation of Rs.27,46,985 with interest at the rate of 7.5% per annum on the compensation amount from the date of filing of claim application from the

appellant Insurance Company. The Insurance Company is accordingly directed to make payment of the compensation amount to the Tribunal within a month of this order. It goes without saying that any amount earlier paid by the Insurance Company under Section 140 shall be deducted from the final award. The Tribunal shall pay the compensation amount to the claimants after proper identification in the manner given below:

- A. 50% of the total compensation amount to be paid to the Claimant no.1
- B. 30% of the total compensation amount to be paid to claimant no.3 jointly with claimant no.1 which will be fixed deposited till he attains the age of 21 years.
- C. 20% of the compensation amount to be paid to claimant no.2

The appeal is dismissed with the above modification of award. The cross-objection is disposed of in terms of the award. Appellant Insurance Company is permitted to withdraw the statutory amount deposited at the time of filing of this appeal.

Consequently, I.A. Nos. 5263/21, 5302/18 and 5910 of 2021 in M.A. No. 138 of 2013 stand disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 17th February, 2022

AFR / AKT