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SooperKanoon Citation : sooperkanoon.com/360638

Court : Mumbai

Decided On : Nov-02-1984

Reported in : 1(1985)ACC353

Judge : C.S. Dharmadhikari and V.V. Vaze, JJ.

Appellant : Shriniwasan Raut and anr.

Respondent : A.V. Shriniwasan and ors.

Judgement :

C.S. Dharmadhikari, J.

1. This is an appeal filed by the owner of the Truck as well as Insurance Company against the Award passed by the Member of the Motor Accident Claims Tribunal, Pune dated 26th of February 1980 in Applications Nos. 9 and 10 of 1977.

2. It is an admitted position that an accident took place on the night between 21st and 22nd of February 1976 in which the deceased Captain Ravichandran died on the spot. It is also an admitted position that the Captain Ravichandran and his wife Mythily were proceeding on a scooter and a truck driven by D.W. Sampat was coming from the opposite side. Mythily was occupying the pillion seat at the material time and the scooter was proceeding along Bombay, Pune Road. It is the case of the claimants that Captain Ravichandran was driving his scooter slowly on the left hand side of the road whereas the truck driven by Sampat came from the

opposite direction and was being driven at as recklessly high speed and without sounding any horn. It had only one head-light and that too on the left side and the driver of the lorry was careless and negligent in driving. Thus the driver was driving the truck carelessly and disregarded the safety rules. Ultimately he lost his control over his vehicle, suddenly swerved to the wrong side and in the process hit the scooterist with violent force, and as result of this accident Smt. Mythily fell down and the scooter got in the wheel of the lorry and was dragged to a distance of about 50 feet when the truck ultimately stopped. As a result of this violent drag Captain Ravichandran died on the spot. Thus it was the case of the claimants that because of the negligent driving of Sampat the truck driver, accident took place resulting in the death of Captain Ravichandran and serious injuries to Mrs. Mythily. The statements made in the application by the claimants was denied by the opponents. In all two separate applications came to be filed one by the widow of the deceased for the injuries sustained by her and the another by Mrs. Mythily and her parents. Both these applications were heard together and were also disposed of by a common judgment In support of their case, claimants examined Smt. Mythily wife of the deceased who is also an eye witness since she was sitting on the pillion of the scooter when the unfortunate accident took place. The claimants had also examined Suresh Dnyaneshwar Kulkarni, section officer C.D.O. Pune to prove the emoluments-drawn by the deceased. P.W.3 Kallappa is a panch witness to the panchnama. P.W.4 is Captain Ashok Kumar who has produced the documents to prove the pay scale etc of the deceased. P.W.5 Chandrikaprasad is the Army Medical officer who has proved the injuries sustained by Smt. Mythily. P.W.6 Deshmukh is also examined to prove the service rules by which the deceased was governed. P.W.7 A.V. Shrinivasan is the father of the deceased. So far as the opponents are concerned, they examined Sampat the driver of the truck. After appreciating all the evidence on record the learned Member of the Tribunal came to the conclusion that the accident took place because of the negligent driving by Sampat the truck driver. The learned Member has recorded a positive finding that the truck driven by Sampat which came from the opposite direction was being driven recklessly at a high speed without sounding any horn and having only one head light on the left side. The learned member also came to the conclusion that the Captain Ravichandran was driving his scooter on the left hand

side of the road and was not negligent at all. As a result of this finding and after taking into consideration the emoluments which the deceased might have received in his service career, the learned Member came to the conclusion that the claimants were entitled to get compensation at Rs. 1,75,000/- so far as the deceased Captain is concerned. He also found that Smt. Mythily was entitled to get Rs. 20,500/- as additional compensation for the injuries sustained by her. Thereafter the learned Member passed the order of apportionment of compensation. As already observed it is this award made by the learned Member which is challenged in the present first appeal.

3. Shri Kudroli, the learned Counsel appearing for the appellants contended before us that the accident took place primarily due to negligence of the deceased. In any case this was a case of contributory negligence. He further contended that even the quantum of compensation awarded by the Tribunal is wholly illegal, The method followed by the Tribunal is not only erroneous but the learned Member has also committed an error in not making proper deductions from the amount of compensation arrived at. According to Shri Kudroli taking any view of the matter it was the duty of the learned Member of the Tribunal to first arrive at a figure of dependency so far as the dependants are concerned. The dependency could not have been more than Rs. 400/- per month. The learned Member also failed to take into consideration that in the normal course the couple would have some children and therefore the dependency would have been reduced so far as the wife and parents are concerned. He also committed an error in calculating the compensation on the basis of gross salary and not on the basis of net salary after deduction of income tax etc. In support of his contention Shri Kudroli has placed strong reliance upon the decisions of the Supreme Court in : [1966]3SCR649 Municipal Corporation of Delhi v. Subhagwanti and Ors., : AIR 1971 SC1624 - Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insu. Co. Ltd and Anr. and the decision of Himachal Pradesh High Court in , H.P. Road Transport Corporation v. Pt. Jai Ram and etc. etc.

4. On the other hand it is contend ed by Shri Tripnis, the learned Counsel appearing for the respondents, that on the material placed on record it is more than clear that the accident took place because of the negligent driving of the truck

driver. So far as the quantum of compensation is concerned, it is contended by Shri Tipnis that what was awarded is also grossly inadequate. Therefore in any case on interference is called for with the award passed by the Tribunal.

5. With the assistance of the learned Counsel appearing for both sides we have gone through the entire evidence placed on record. So far as the question of negligence is concerned we entirely agree with the appreciation of evidence as well as finding of fact recorded by the learned Member of the Tribunal in that behalf. Since we are in general agreement with the appreciation of evidence as well as finding of fact recorded in that behalf, it is strictly not necessary to reproduce the whole evidence or to state the reasons for the findings over again. P.W. 1 Mythily was obviously an eye witness as she was sitting on the pillion of the scooter when the accident took place. She has given details as to how the scooter was being driven. According to her when they came near Arun Theatre at Dapodi, it was about midnight and the show was over. At that time a lorry was coming in the opposite direction, which was driven in a high speed and only one of the head-lights was switched on. She then stated that the scooter was driven at a very slow speed. Her husband Captain Ravichandran was driving the scooter slowly because the show was over and the people were coming out on the road from the theatre. The scooter was proceeding on the left hand side of the road. The lorry approached them and suddenly swerved to their side and thereafter it was not possible for her to tell what happened, because she lost consciousness. In the cross-examination she stated that at the time of the incident the speed of the scooter might have been less than 30 k.m. per hour as her husband was driving it at a normal speed. It was not possible for her to say about the distance between the scooter and the truck when she noticed the truck coming in opposite direction. She also denied a suggestion that the scooter was being driven at a high speed. In the cross-examination various statements made by this witness in the examination-in-chief are not challenged. There is no challenge to her evidence that the truck was being driven at a high speed with only one of the head lights switched on. However, it was contended by Shri Kudroli that the said evidence is inconstant with the statement made in the panchanama. We find it difficult to accept this contention of Shri Kudroli for more than one reason. The statements made in the panchnama are not based on the material supplied by any eye

witnesses. Smt. Mythily was not a party to the panchnama. When she was examined as a witness and was in the witness box, no questions were asked to her on the basis of the statements made in the panchnama to discredit her testimony. Unless the witness is given an opportunity to explain the circumstance, the testimony of a witness cannot be discarded on the basis of certain statements made in the panchnama to which the witness is not a party nor was given an opportunity to explain it. In these circumstances in our view the learned Member of the Tribunal was wholly justified in accepting the evidence of Smt. Mythily.

6. The other evidence is that of truck driver Shri Sampat. We have also gone through the evidence of Shri Sampat and to say the least we are satisfied that he is not a witness of truth. He stated that the scooterist came from the opposite direction after he crossed the bridge. According to him the scooter was coming from the wrong side of the road. However this statement made by Shri Sampat on the face of it is incorrect, nor he is right in saying that the scooterist came on his vehicle all of a sudden. He admitted that he swerved his vehicle to the left and practically went over the foot path, when the scooterist hit right side hind wheel of his truck. In para 4 of his deposition he admitted that be noticed the scooterist first when it was 15-20 ft away from him. Obviously the distance given by the witness is also not correct. The evidence of this witness is full of confusions. Ultimately he had to admit that after the scooter got entangled in his vehicle the truck could not proceed further and, therefore, he got down and saw what had happened. It cannot be forgotten that even after the scooter got entangled in the vehicle, the truck proceeded for more than 50 ft. Therefore there are inherent improbabilities in the evidence of the truck driver. In these circumstances if the learned Member preferred to rely upon the evidence of Smt. Mythily, it cannot be said that the view taken by the Tribunal is any way wrong so as to call for interference in this first appeal. To say the least we have gone through the entire evidence of this witness and we are satisfied that Smt. Mythily is a witness of truth. She has given a graphic picture of the whole incident and had stated in a straight forward manner as to how the accident took place. From the material placed on record it is more than clear that the deceased was a responsible Army officer and had decent career in Army and had received gallantry awards. He was driving the scooter on the left hand side of the road very cautiously and in these circumstances the

conclusion is inevitable that it was the truck driver who was driving the truck rash and negligently and, therefore we have no hesitation in confirming the finding that the accident took place because of the rash and negligent driving of the truck driver alone and Captain Ravichandran was not responsible for the accident even remotely.

7. So far as the quantum of compensation is concerned it is pertinent to note that the learned Member of the Tribunal has calculated the compensation by applying both the methods. He had ultimately ascertained the compensation on the basis of the service career of Captain Ravichandran and then also found that even on applying the method of multiplying, the compensation would be the same. In our view if at all the learned Member of the Tribunal has erred, he has erred on the other side as rightly contended by Shri Tipnis. It is no doubt true that no cross objections have been filed by the claimants but from the discussions in para 14 of the judgment, it is more than clear that there are certain misstatements of facts. It is quite clear from the material placed on record that Captain Ravichandran got promotion when he was 23 years of age. On that basis he became captain within a period of 2 years. His service book shows that he got Sainya Seva Medal. Accepting the reasonings of the learned Member of the Tribunal, in the normal course he would have became Major at the age of 36 years only and not at the age of 42 years as observed by the learned Member of the Tribunal. There is also an arithmetical mistake even in calculation and totaling. If the age of 36 years is taken to be the age for promotion to the next cadre, then obviously the calculations made by the Tribunal are erroneous and on that basis the claimants would be entitled to compensation at the higher level. Therefore taking any view of the matter it cannot be said that the compensation awarded is on the higher, side, Shri Kudroli, on the basis of the decisions of the Supreme Court and High Court has contended before us that the learned Member has committed an error in deducting only 25% for the lump sum payment and has not arrived at a proper figure, so far as the amount which could have been received by the dependants. According to him the dependency would have been more than Rs. 400/- and on that basis the calculation should have been arrived at and then the principles of deductions should be applied. We find it difficult to accept this contention for more than one reason. To say the least and monetary compensation is not adequate

compensation for the life lost so far as the widow and parents are concerned. The arithmetical calculations that what will be required by the dependents must depend upon the facts and circumstances of each case. The husband and wife were living together and were spending about Rs. 600/- per month as household expenses. This only included the basic needs of family and did not include other expenditure. Therefore it will not be correct to say that, that was the amount which the deceased was spending on the family. Taking any view of the matter in our view the learned Member of the Tribunal has not properly calculated the service span of the young army officer. It cannot be forgotten that he got first promotion within a span of 2 years, get gallantry awards and, therefore in the normal course he would have reached the rank of Lieutenant Colonel. However, the compensation is ascertained by the Tribunal only on the basis of his earnings as Major and that too upto the age of his retirement, though he would have earned something even after retirement. Some element of conjecture is inevitable in assessing compensation. This is known as 'reasonable prophecy'. In this case the Tribunal has calculated it taking into consideration the total service period of deceased only. Therefore the compensation is not based on the total life span of the deceased or his total earnings throughout his service career coupled with the promotions he would have achieved in the normal course; in view of his excellent service career. This being the position in our view it will not be correct to say that the compensation awarded by the Tribunal is not just and fair. As already observed as a matter of fact, the Tribunal has erred on the other side. The deduction made from the compensation which is 25% is also adequate, Therefore we do not find anything wrong in the compensation awarded by the learned Member of the Tribunal. We have also gone through the decisions cited by Shri Kudroli at the Bar. From these decisions it is quite clear that ultimately the quantum of compensation must depend upon the facts and circumstances of each case. In the present case we are dealing with a case wherein an Army Officer was killed in an accident at the age of 29 years. Admittedly he could have remained in service upto the age of 52 years. He got his first promotion within a span of 2 years. He also got gallantry awards. In these circumstances in could be reasonably expected that he would have got further promotions also. Inspite of this case of speculative nature of further promotion, the Tribunal had fixed compensation taking into consideration his emoluments as

Major only and that too without considering the rest of his life span. Therefore we do not think that in the peculiar facts and circumstances of the case, any interference is called for with the quantum of compensation as awarded by the Tribunal.

8. As per the interim order passed by this Court the appellants have already deposited an amount of Rs. 1 lac in the trial court which the claimants were at liberty to withdraw after furnishing security. However as a result of dismissal of this appeal the appellants will have to deposit further amount of Rs. 75,000/- with interest as awarded by the Tribunal. The appellants will have to pay interest on the said amount of Rs. 1 lac till the date of deposit from the date of application, So far as the rest of the amount is concerned, the appellants are directed to deposit the said amount with interest in the trial court within a period of two months. On such deposit being made the trial court shall pass appropriate order in tune with the guidelines laid down by this court in Nav Bharat Builders v. Smt. Pyarabai w/o Dadu Mane 1984 (2) Bombay Cases Reporter.

9. Obviously such an order will have to be passed after giving opportunity of being heard to the claimants.

10. In the result therefore appeal fails and is dismissed with costs.

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