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Court : Karnataka

Decided On : Jan-11-1963

Reported in : AIR1964Kant113; AIR1964Mys113

Judge : H. Hombe Gowda and ;G.K. Govinda Bhat, JJ.

Acts : Fatal Accidents Act, 1855 - Sections 1-A

Appeal No. : Appeal No. 161 of 1957

Appellant : The State of Mysore

Respondent : Gowri Vithal Deshbhandari and ors.

Advocate for Def. : K.I. Bhatta, Adv.

Advocate for Pet/Ap. : G. Channappa, Asst. Adv. General

Judgement :

Govinda Bhat, J.

1. This is an appeal from the judgment and decree of , the Court of the Civil Judge, Senior Division, Karwar, in Original Civil Suit Number 139/1955, in which the respondents 1 to 5 claimed damages in respect of the death of one Vithal Laxman Deshbhandari on 1st October 1954 as a result of a fatal accident caused to him by a motor vehicle driven by the second defendant, a motor driver employed by the

first defendant. The plaintiffs brought the suit, out of which this appeal arose, under Section 1-A of; the Fatal Accidents Act, 1855 (Act XIII of 1855) on their own behalf and on behalf of the defendants 3 and 4, the parents of the deceased, on the ground that Vithal Laxman Deshbhandari's death was caused by the negligence, of the second defendant, for which the first defendant was responsible. The first plaintiff is the wife and plaintiffs 2 to 5 are the minor children of the deceased Vithal Laxman Deshbhandari who was working as a porter in the bus stand at Honavar.

There were altogether three porters including thedeceased working in the said bus stand. The other twoporters were P. W. 2 Durgappa and P. W. 3 Nagappa,Motor Transport having been nationalised in the Districtof North Kanara, the Bombay State Road Transport Corporation was operating the stage carriage services ondifferent routes in that district during the relevant period.Bus No. B. Y. L. 9441 was one of the stage carriagesoperating between Honavar and Kumta. It used to startfrom Honavar on its daily service at about 5.30 A.M.During the rainy season, the buses would not start onthe self-starter and the practice was to push them forsome distance in order to start them. The porters working in the bus stand were normally called to do this workof pushing the vehicles. On 14-6-1954, defendant Ho. 2asked the deceased Vithal Laxman and P, Ws. 2 and 3 topush his vehicle as it would not start. P. Ws. 2 and 3(Durgappa and Nagappa) pushed the vehicle from the twosides on the rear and the deceased was in the centre ofthe rear.

When the vehicle had been pushed for some distance its engine started. :Then without giving any warning to the porters who were on the rear and pushing the vehicle, the second defendant suddenly reversed the Vehicle and drove with speed, p. Ws. 2 and 3, who were at the corners on either side of the bus, escaped but deceased Vithal Laxman who was at the centre of the-rear had no time to escape and he was felled down on the ground by the motor vehicle. According to the ease of the plaintiffs as found by the trial court, not only that Vithal Laxman was knocked down by the vehicle but he was run over by the Bus causing him serious injuries, particularly the fracture of his spinal cord. Vithal Laxman was removed to the Municipal Hospital at Honavar immediately and he remained there as an inpatient for about twelve days. Thereafter, he was taken to the Civil

Hospital at Karwar where he- remained as an inpatient till 2-7-1954, when he was discharged as his case was found hopeless.

Then, he was taken back to his house at Kumta, where on 9-7-1954, he swore to an affidavit before the Taluka Magistrate at Kumta stating the circumstances under which he was knocked down by the bus causing him serious injuries. On 1-10-1954, Vithal Laxman succumbed to his injuries. On 8-4-1955, a lawyer's notice was issued to defendant No. 1 demanding a compensation of Rs. 15,000/- under the Fatal Accidents Act and the suit was instituted on 11-7-1955. Plaintiffs alleged that the deceased was aged only 34 years at the time of his death, and was earning about Rs. 80 to 90/- per month on an-average and he was the sole bread winner of the family consisting of the plaintiffs and defendants 3 and 4. They estimated the damages at Rs. 15,000/-. The second defendant filed a written statement denying the plaint allegation that the deceased Vithal Laxman was knocked down by his bus and died as a result thereof. He also denied that the average monthly income of the deceased' was Rs. 80/- to Rs. 90/-.

The quantum of damages claimed was also disputed. The first defendant did not file, any written statement-hut merely adopted the written statement filed by the second defendant. Defendants 3 and 4 appeared by a-Pleader and supported the claim of the plaintiffs but they did not file any written statement. On the pleadings, the learned trial Judge framed seven issues. The findings on all the issues are in favour of the plaintiffs. Accordingly he decreed the suit awarding Rs. 15,000/- as damages against defendants 1 and 2. Aggrieved by the said decree, the State of Mysore represented by the General Manager. Mysore Government Road Transport department, successor-in-interest to Bombay State Road Transport Corporation, has preferred this appeal.

2. Shri Chennappa, the learned Assistant Advocate-General appearing for the appellant, has taken us through the pleadings and the entire evidence. ' After going through the evidence, he has rightly, in our opinion, not challenged the correctness of the finding that the fatal accident was caused to deceased Vithal Laxman Deshbhandari by the negligence of defendant No. 2. The learned-Counsel restricted his arguments to the quantum of damages awarded by the learned trial

judge. Before the appellate Court can properly intervene on the assessment of damages by a trial Judge, it must be satisfied either that the Judge, in assessing the damages, applied a wrong principle of law as by taking into account some irrelevant factor or leaving out of account some relevant one or that the amount awarded is either so inordinately low or so inordinately high that it must be 3 wholly erroneous estimate of the damage. Shri Channappa urged that the assessment of damages by the learned trial-Judge is not in accordance with-the correct principle of law as settled by judicial decisions. The contention of Shri Channappa, in our opinion, is Well founded.

The learned trial Judge estimated the average daily earnings of the deceased at Rs. 2/- and on that basis his annual earning at Rs. 720/-. Deceased Vithal was born on 15-5-1921 and he died when he had completed 33 years four months and 16 days. His expectation of life was fixed if he had not been killed when he was, at 21 years 7 months and 14 days. Then, the learned Judge calculated the total amount that would have been earned by the deceased if he had lived for 21 years 7 months and 14 days and arrived at the figure Rs. 15,568/-. Since the plaintiffs' claim is only for Rs. 15.000/-, he awarded that amount, as compensation. After stating that the decisions relied on by him 'lay down that the damages are compensation for the loss' of the actual pecuniary benefit which the beneficiaries might reasonably have expected to enjoy had the deceased not been hilled', he assessed the damages at the total amount that would have been earned by the deceased if he had lived to the age of 55 years.

3. Section 1-A of the Fatal Accidents Act provides for a suit to be brought for the, benefit of the wife, husband, parent and child, if any,--of the person whose death has been caused by wrongful act, neglect or default of the party sued and that in every such action the court may give Such damages as it may think proportionate to the loss resulting, from such death to the parties respectively, for whom and for whose benefit such action shall be brought and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shires as the court by its judgment or decree shall direst. The Indian Fatal Accidents Act, 1855, is in pari materia with the English Fatal Accidents Acts,

known as the Lord Campbell's Acts.

English Courts had laid down that damages in actions under the Fatal Accidents Acts are such as the jury think proportionate to the injury resulting from the death to the parties for whose benefit the action is brought. Damages are based on the amount of actual pecuniary benefit which those persons might reasonably have expected to enjoy had the deceased person not been killed. The Supreme Court of India, in Gobald Motor Service Ltd. v. Veluswami, : [1962]1SCR929 , has accepted the principles governing the assessment of the quantum of damages as laid down by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 and the Judicial Committee of the Privy Council in Nance v. British Columbia Electric Rly. Co. Ltd., 1951 AC 601. Dealing with the casa of the death of a working husband. Lord Wright in 1942 AC 601, said:

'The starting point is the amount of wages which the deceased was earning the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for fits own personal and living expenses. The balance will give a datum of basic figure which will generally be turned Into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance that the widow might have-again' married and thus ceased to be dependent, and other like matters of speculation and doubt.'

Viscount Simon in the above cited Privy Council casehas stated the same principles with force and claritythus: ,

'The claim to damages in the present case fells under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could' reasonably have looked forward, what sums during that period would be probably have applied out of his income to the maintenance of his wife and family? ..... A proper approach to these questions is, in their Lordships' view, one which takes into account and gives due weight to the following factors; the evaluation of some, indeed most of them, can, at best, be but roughly calculated.

Under the first head -- indeed/ for the purposes of bom heads -- it is necessary first to estimate, what was the deceased man's expectation of life if he had not been 'killed when he was; (let this be 'x' years) and next what sums during these 'x' years he would probably have applied to the support of his wife. In fixing x, regard 'must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident. In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available though not conclusive, since if he had survived, his means might have expanded . or shrunk, and his liberality might have grown or wilted.,, In the present case it is known that in the years 1945-48, which immediately preceded his death, his 'drawings'. from his business averaged $ 2,600 per annum. His wife's maintenance was derived from, and could not have exceeded, these drawings. What proportion of such amount he in fact contributed to her support is a matter of guess-work, but both his widow and her sister give him a good character for generosity. He was a 'good provider.' Supposing, by this method, an estimated annual sum of $ y is arrived rat as the sum which would, have been applied for the benefit of the plaintiff for: x more years, the sum to be awarded Is not simply $ y multiplied by x, because that sum is a sum spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages. Then a deduction must further be made for the benefit accruing to the widow from the acceleration of her interest in his estate on his death intestate in 1949 (she came into $ 6,500, one third of his estate, x years sooner than she would otherwise have done) and if her interest in sums payable on a policy of $ 1,000 on his life; and a further allowance must be made for a possibility which might have been realized if he had not been killed but embarked on his allotted span of x years namely, the possibility that the wife might have died before he did. And there is a further possibility to be allowed for -- though in most cases It is incapable of evaluation -- namely, the possibility that, in the events which have actually happened, the widow might remarry in circumstances which would improve her financial posision.'

Subba Rao, J. in : [1962]1SCR929 summarised the principles laid down by Viscount Simon thus: '

'at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and possibility of premature, determination of his me by later accidents; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his life-time, and other circumstances; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate; and fifthly, turner amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of me widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation, Theretore, the actual extent of the pecuniary lose to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture, shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by death must be ascertained,'

Shri K. I. Bhatta, learned counsel for the respondents did not dispute that the learned trial Judge did not assess the damages by applying the correct legal principles.

4. The correctness of the estimate of the average annual earnings of the deceased made by the learned trial Judge cannot be and has not been seriously challenged before us by the learned counsel for the appellant. P. ws. 2 and 3 Durgappa and Nagappa, the two porters wonting In the Honavar Bus stand, have given evidence to the effect that there were only three porters working In the Honavar bus stand and their total daily earnings on an average mounted to Rs. 10/- to Rs. 12/- which they used to divide equally, and, therefore, the average daily earning of a porter was between Rs. 3/- to Rs. 4/-. D.W. 1 the sole witness for the contesting

defendants deposed that the average daily earning of a porter was only Re. 1/-. D.W. 1 had no personal knowledge of the actual earnings of the porters. It Has not been suggested to P. Ws. 2 and 3 that there were more than three porters working In the bus stand or that the charges for loading or unloading was not six pies per load as stated by them.

Some deduction necessarily has to be made from the figure given by P. Ws. 2 and 3 for the days when the deceased would have had no earnings owing to illness, Indisposition or holiday. The deceased would have spent a few annas for his tiffin in tea-shops he was wonting from the early hours of the morning in the bus stand, un a consideration of the entire evidence we are of the opinion that the average annual earning of the deceased Which he would have applied for the maintenance of his family Including himself could be fixed at Hs. 750/-. There is no direct evidence to snow the proportion in which the said amount was applied for the maintenance of the deceased and his dependants. Defendants 3 and 4 are aged persons and plaintiffs 2 to 5 are minor children. We may assume that the deceased and the first plaintiff who were adults and working required at least twice the amount of the non-working members of the family and on that basis, the benefits which the first plaintiff received may be estimated at Rs. 150/- per annum and by each one of the rest of the dependants at half of the said amount i.e., RS. 75/-.

5. The deceased man's expectation of life at the time of his death was estimated by the learned trial Judge at 21 years / months and 14 days on the assumption trial he would have lived to the age of 55 years. The deceased man's expectation of life has to be estimated having regard to his age, bodily health and possibility of premature determination of his life by later accidents. From the actuarial tables for males for South India Zone the expectation of life at the age of 34 is 26.57 years. Taking the actuarial tables as furnishing a more correct basis for the normal 'expectation of life' than the age of superannuation of 55 years taken by the learned trial Judge, the deceased Vithal's expectation of life could be estimated on the date of his death at 26 years. The amount required for the future provision of the first plaintiff has to be computed by multiplying the estimated annual sum of Rs. 150/- by 26 years which is the expectation of life of the deceased. On the said

basis the total benefits which the first plaintiff may have received from the deceased comes to Rs. 3,900/-. The said sum however has to be taxed down by having due regard to uncertainties of life and the fact that the amount is payable in a lump--sum on the death of her husband.

Having regard to the many Imponderables entering Into the calculation, in our opinion the sum of Rs. 3,900 should be reduced by 20 per cent. With regard to plaintiffs 2 to 5, they were aged 11, 8, 5 and l years respectively at the time of the death of the deceased Vithal. In estimating the pecuniary- benefits expected by the minor children of a worker we may expect the deceased to maintain his children until he attained the age of 18 years. Defendant 3 was aged 79 years at the time of the death of deceased Vithal and he died In 1956. Therefore, the 3rd defendant would have received the benefits for a period of two years. The 4th defendant was aged 64 years at the time of the death of deceased Vithal and according to the actuarial life table, the expectation of life of a female for South India Zone at the age of sixty-four is nine years. The pecuniary benefits which plaintiffs 2 to 5 and defendants Nos. 3 and 4 might have expected to enjoy, had the deceased person not been killed when he was on the above basis, works as follows:

2nd Plaintiff 75 x 7 Rs. 525/-3rd Plaintiff 70 x 10 Rs. 750/-4th Plaintiff 75 x 13 Rs. 975/-6th Plaintiff 75 x 17 Rs. 1, 275/-3rd Defendant 75 x 2 Rs.. 300/-4th Defendant 76 x 9 Rs. 675/-

The above amounts have to be taxed down since the payments are made In a lump sum on the death of the deceased. In the case, of plaintiffs 2, 3 and defendant No. 4, we reduce the amounts by 10 per cent since the periods during which they, would have received the benefits range between 7 to 10 years. In the case of plaintiffs Nos. 4 and 5, we reduced the amounts by 15 per cent since they receive the benefits for a longer period. We do not think It necessary to reduce the figure In the case of third defendant. On the above basis, the compensation payable to each of the plaintiffs 1 to 5 and defendants 3 and 4 is fixed as follows:'

Plaintiff--1 Rs 3,150/-Plaintiff--2 Rs. 475/-Plaintiff--3 Rs. 675/-Plaintiff--4 Rs. 830/-Plaintiff--5 Rs. 1,085/-Defendant--3 Rs. 300/-Defendant--4 Rs. 600/-Total Rs.

7,115/-

6. For the above reasons, we allow the appeal in part and modify the decree of the Court below by reducing the amount of compensation; which we fix at Rs. 7,115/- to be apportioned in the manner stated above. Having regard to the circumstances of the case, we direct that the order as to costs made by the Court below will stand and that In the appeal the parties will bear their own costs.

7. Appeal allowed.

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