

Dhanpati Vs. State of U.P. Through Superintending Engineer

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Court : Allahabad

Decided On : Dec-10-1991

Reported in : 1992ACJ338

Judge : N.L. Ganguli and ;Birendra Dikshat, JJ.

Appeal No. : F.A.F.O. No. 3 of 1983

Appellant : Dhanpati

Respondent : State of U.P. Through Superintending Engineer

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : V. Singh, Adv.

Disposition : Appeal allowed

Judgement :

N.L. Ganguli, J.

1. This first appeal from order is directed against the judgment and order passed by the Motor Accidents Claims Tribunal dated 24.9.1982 in Claim Petition No. 11 of 1979, by which the claim petition was partly allowed and a compensation of Rs. 5,000/- was awarded to Balopa and Rs. 7,000/- to Dhanpati and her minor daughter.

2. Dhanpati alone has filed this appeal under Section 110-D of Motor Vehicles Act claiming a relief that amount of compensation awarded by the Claims Tribunal is illusory and wholly inadequate in view of facts and circumstances of the case. The prayer is to allow the appeal and enhance the compensation according to law.

3. On 21.4.1979 an accident took place by motor car No. UTE 414 belonging to the respondent State of U.P., Superintending Engineer, IV Circle, P.W.D., Varanasi. Deceased Chhotey Lal was employed in the Hydel Department at Robertsganj and was getting a salary of Rs. 400/- per month. On 21.4.1979 at 8 p.m. when Chhotey Lal who was going to Chhaka Power Station on rickshaw in connection with his duties, the aforementioned car UTE 414 which was being driven rashly and negligently came from opposite direction and dashed against the rickshaw by which the deceased was travelling. The rickshaw-puller Rajendra Prasad and other occupant of the rickshaw received injuries and Chhotey Lal, husband of the appellant Dhanpati, died due to the injuries caused in the accident.

4. The Tribunal found after scanning the evidence that at the time of death, the age of the deceased Chhotey Lal was about 34 years. He was in good health and had he not been killed in the accident, he would have lived up to 90 years. As the shock and result of the death, the appellant suffered great mental shock, loss of the company of the husband, hence a compensation of Rs. 1.79.200/- was claimed from the respondent. The respondent contested the claim petition by filing a written statement and pleaded that car No. UTE 414 was not driven rashly or negligently, in fact it was driven on a normal speed and the headlight was on at the time of the accident. The rickshaw had abruptly crossed the road at a distance of about 2 km. from Robertsganj, it had no light. Since the rickshaw had abruptly crossed the road, the accident took place. It was said that the car was in perfect order and its brakes were provided with new lining. There was no negligence of driver of the car but on account of rash and negligent driving of the rickshaw which resulted into the accident. The PWD staff car was not insured with any insurance company. The amount of compensation claimed was stated to be highly inflated and excessive.

5. The fact that Dhanpati is the widow of the deceased Chhotey Lal and the accident was on account of rash and negligent driving of the Ambassador car No. UTE 414 belonging to the Public Works Department, State of U.P., is fully proved by the evidence on record and the findings recorded by the court below on the aforesaid points have not been disputed by the respondent.

6. In the present First Appeal From Order, the appellant has claimed for a relief that the amount of compensation awarded by the Tribunal is wholly illusory and meagre and inadequate in view of the facts and circumstances of the case. The evidence of PW 4 Mohd. Israil, who filed the copy of the service record of the Hydel Department concerning the deceased, conclusively proved that the deceased was getting a salary of Rs. 421.75 at the time of death. The Tribunal accepted the said amount as the monthly income of the deceased.

7. About the question of longevity in the family of the deceased, the Tribunal accepted the evidence of Dhanpati, appellant, who stated that the father of Chhotey Lal deceased lived up to the age of 80 years. The mother of the deceased at the time of the accident was about 65 years of age, who also received compensation on account of her being dependant of the deceased. The question about the longevity was decided by the Tribunal and the probable age up to which the deceased would have lived cannot be held to be less than 60 years. Dhanpati, widow of Chhotey Lal, received insurance money of Rs. 12,368.78 after the death of her husband. The amount of insurance money received by the appellant has no nexus in the matter of compensation payable to her. Admittedly, Chhotey Lal, deceased husband of the appellant, was working in the Hydel Department and after his death in the accident, appellant Dhanpati has been given a job in the Hydel Department under the harness rules and she at the time of the decision of the claim petition was getting a salary of Rs. 612/- per month. While calculating the compensation payable to Dhanpati appellant and her minor daughter, the Tribunal illegally observed that since Dhanpati was given a job in place of her deceased husband in Hydel Department, she cannot be said to have suffered any financial loss because of the death and on that account, she would not be entitled to any compensation. The Tribunal has committed a patent illegality in not awarding compensation to the appellant on account of her husband's death

in the accident, only because she has been given a job in the Hydel Department and the present emoluments she was receiving were more than the amount of the salary of the deceased. This cannot be a ground to refuse the payment of compensation to the wife that she has been given the job under harness rules. Had the husband not died the appellant would have continued to do other work besides the domestic work etc. and on account of the employment given to her, she has to devote herself to the service of the State and she is being paid the salary for the work done. Since she works in the Hydel Department, some other person has to do the other work which she used to do previously. The ground for refusing to pay any compensation to the wife is liable to be set aside and the amount of compensation shall be payable to her according to multiplier system. Admittedly, the deceased was getting a salary of Rs. 421.75 per month. It is estimated that the deceased spent Rs. 50/- for his mother and out of the balance amount, he contributed towards the family about Rs. 200/- and the rest he spent on himself. Admittedly, at the time of the accident, he was about 34 years and he would have lived for next 26 years. In view of the decision reported in *Krishna Kumari Gupta v. Gurbux Sheesh Singh* 1985 ACJ 457 (Allahabad), I consider that a multiplier of 16 would be just and proper compensation. In view of the facts and circumstances of the case, applying multiplier of 16, she should be entitled to a total amount of Rs. 38,400/- plus 10 per cent interest from the date of the judgment of the court below.

8. The Tribunal below awarded a sum of Rs. 7,000/- on account of mental and physical pain suffered due to untimely death of her husband and loss of company. No reason for arriving at the conclusion was recorded by the Tribunal below for awarding a sum of Rs. 7,000/-. It was merely observed that these facts cannot be possibly calculated in terms of money and an element of speculation was inevitable. This cannot be denied that amount of compensation for loss of society, mental shock suffered cannot accurately be determined and it shall have to be determined on speculation. The Tribunal below had determined it to a figure of Rs. 7,000/- and learned Counsel for the appellant could not cite any other provisions or case-law to the contrary to show that any higher amount would be payable on account of loss of company and mental shock suffered by the appellant. Hence no interference is called for in view of amount assessed on the said count by the

Tribunal below.

9. In view of the findings recorded above, the appellant shall be entitled to receive a sum of Rs. 38,400/- as compensation for herself and her minor daughter with an interest of 10 per cent from the date of the award by the Tribunal below, besides Rs. 7,000/- as compensation for loss of society and the company and mental shock etc. with an interest of 10 per cent from the date of award. If the amount of Rs. 7,000/- has already been paid, no interest shall be payable on the said amount to the appellant. In case the amount of Rs. 7,000/- is still payable, the appellant would be entitled to get 10 per cent interest on the said amount also.

10. The appeal is accordingly allowed. The parties to bear the costs.

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