

Katwari and ors. Vs. Gur Dayal Singh and Co. and anr.

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Court : Allahabad

Decided On : Jan-29-2004

Reported in : II(2004)ACC207; 2004ACJ1159

Judge : Ashok Bhushan, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 168 and 173; Motor Vehicles (Amendment) Act, 1994

Appeal No. : F.A.F.O. No. 67 of 1992

Appellant : Katwari and ors.

Respondent : Gur Dayal Singh and Co. and anr.

Advocate for Def. : Pradeep Kumar, Adv.

Advocate for Pet/Ap. : Anita Srivastava, Adv.

Judgement :

Ashok Bbushan, J.

1. Heard Ms. Anita appellants and Mr. Pradeep Kumar, learned Srivastava, learned counsel appearing for counsel appearing for the respondents.

2. This appeal has been filed under Section 173 of [Motor Vehicles Act, 1988](#) challenging the judgment and decree dated 31.10.1991 of the Motor Accidents

Claims Tribunal, Allahabad.

3. Brief facts giving rise to this appeal are: husband of appellant No. 1, Ram Dularey, while going on a cycle on 2.10.1982 was hit by truck No. UTY 1255 resulting in his death on the spot. Appellant No. 1, who is the widow and appellant Nos. 2 and 3, who were minor daughters at the relevant time, filed Claim Petition No. 181 of 1985 claiming compensation of an amount of Rs. 1,50,000/-. In support of the claim petition, appellant No. 1, Head Constable Vindhyaachal Singh, Mahfooz Ahmad, Abdul Saleem and Ramesh Chandra were examined. Tribunal framed three issues. Finding on issue No. 1 was recorded in favour of claimants. While deciding issue No. 2 it was held that vehicle was insured by New India Assurance Co. Ltd. While deciding issue No. 3 the Tribunal awarded total compensation of Rs. 53,000/- under Section 168 of the Motor Vehicles Act with interest at the rate of 10 per cent. The said amount was further apportioned among appellant Nos. 1, 2 and 3 as Rs. 22,000/-, Rs. 15,000/- and Rs. 16,000/- respectively. Challenging the award given by the Motor Accidents Claims Tribunal, the appellants have filed this appeal.

4. Learned counsel for the appellants raised following submissions in support of the appeal:

(i) The Claims Tribunal while determining the compensation has calculated the compensation by multiplying the annual income by 10. The submission of counsel for the appellants is that even accepting the finding regarding age of the deceased at the time of death as 50, according to the Second Schedule of the Motor Vehicles Act as amended by Act 54 of 1994 the multiplier of at least 13 is required to be adopted. The submission is that even though the said Second Schedule was not inserted at the time when the Tribunal decided the case, to arrive at true compensation the principles laid down in Second Schedule can be applied while deciding compensation.

(ii) Claims Tribunal failed to take into consideration the future prospects while determining the annual income. The Tribunal recorded finding that monthly salary of the husband of appellant No. 1 was Rs. 442/- and husband of appellant No. 1 was entitled to continue in service at least till the age of 58 years but while

calculating the amount of compensation the future prospects of increments in salary and other benefits were not taken into consideration.

5. Mr. Pradeep Kumar, learned counsel appearing for the respondents supported the order of Tribunal and contended that Tribunal after considering all the materials on record had arrived at correct finding. He submitted that the Tribunal did not commit any error in multiplying the annual income by 10 and further future prospects were only relevant till the age of 58 years after which the deceased could have retired from service. He submitted that no error can be said to have been committed by the Tribunal in not taking into consideration the future prospects for small period of 8 years.

6. I have considered the submissions and perused the record.

7. The findings recorded with regard to income and age of the deceased are not under challenge. Admittedly, Claims Tribunal recorded a finding that deceased was 50 years of age at the time of death. The Tribunal further recorded a finding that deceased was receiving salary of Rs. 442.50/-p.m. from Jeep Syndicate with regard to which a certificate was issued. While considering issue No. 2 the Tribunal found that deceased could have spent Rs. 342.50/- on his family. The Tribunal further noted that deceased would have attained the age of 65 and even after retirement he could have earned the same amount from other sources for a period of 15 years. The Tribunal also took into consideration that daughters of the deceased who were unmarried would have become 24 years and 20 years of age and after their marriage they would have not been dependent on the deceased. The Claims Tribunal did not record any finding that whether those daughters were married or not but the Tribunal assumed the fact that after the marriage they would not be dependent on the deceased. The Tribunal was lead by the said factor in fixing the multiplier of 10 without recording a finding that both the daughters were married. The Tribunal committed error in observing that those daughters would have been married and would not be dependent on the deceased. The said factor without a finding that daughters were married could not have been taken into consideration while adopting the multiplier of 10. It is true that Second Schedule was not there in the statute when the claim was decided by the Tribunal but the

submission of counsel for the appellants has substance that for determining the fair compensation the principles laid down in the Second Schedule can be looked into.

8. Coming to the second submission raised by counsel for the appellants that the Tribunal has not taken into consideration the future prospects, it is relevant to note that Tribunal has accepted the monthly salary on the basis of certificate submitted by Jeep Syndicate. The Tribunal although took into consideration that the deceased would not have received any pension but has failed to take into consideration the other pecuniary and retirement benefits to which the deceased would have been entitled had he worked till his retirement. Further, Tribunal failed to take into consideration that in employment the salary normally earns increments and revision from time to time. The future prospects and other relevant considerations were also required to be taken into consideration while determining the compensation payable to the appellants. Taking into consideration overall facts, the average of income of the deceased ought to have been taken by the Tribunal while determining the compensation as Rs. 500/-. Although learned counsel for the respondents contended that with regard to determination of future prospects and other benefits the matter should be remitted back to the Tribunal for reconsideration but in view of the fact that Tribunal gave the judgment more than 14 years ago and further time will be taken in remitting the case and deciding the matter by Tribunal, it is appropriate to decide the appeal finally. In view of this, I have not accepted the prayer of counsel for the respondents to remand the matter to the Tribunal for determining the compensation.

9. It is well settled that while choosing the multiplier for determining the just compensation, chances of promotion, future pecuniary benefits were also entitled to be taken into consideration. The Apex Court in *Jyoti Kaul v. State of Madhya Pradesh*, 2000 ACJ 1368 (SC), considering the question of fair compensation due to death of a person aged 50 years had upheld the order of the Tribunal which applied multiplier of 15. The High Court has reduced the multiplier from 15 to 10. The High Court has reduced the multiplier taking into consideration that the deceased was likely to be superannuated after 8 years. The Apex Court held the interference by the High Court unjustified and observed in para 2:

'2. Heard the learned counsel for the parties. We find interference by the High Court on the above basis only is not based on sound reasoning. Tribunal has taken into consideration overall considerations. We find there are different judgments by this court giving different multipliers. This would depend on the facts and circumstances of each case; The multiplier system is sound in computing compensation is now well settled but what multiplier should be applied would depend on various circumstances. The age of the deceased, the age of dependants, not only existing salary when he died, if any, additional sum payable to the deceased depending upon the nature of job in which he was working, his chances of promotion, the life expectancy, etc. Hence the multiplier is bound to change to some degree.'

Taking overall considerations of the entire fact it will be fair to adopt the multiplier of 13.

10. In view of the above, the average of income of the deceased Ram Dularey is taken as Rs. 500/- per month and amount of compensation comes to Rs. 78,000/- in place of Rs. 53,000/-. The amount of Rs. 78,000/-be apportioned by giving Rs. 35,000/- to the appellant No. 1 (wife of the deceased), Rs. 21,000/- to the appellant No. 2 and Rs. 22,000/- to the appellant No. 3 along with interest as awarded by the Tribunal. The rest of the order of the Tribunal is maintained. The respondents are further directed to deposit the balance amount as indicated in this order within a period of 3 months with the Tribunal and thereafter the Tribunal will ensure the payment of the said amount to the appellants within a further period of two months.

11. The appeal is partly allowed to the extent as indicated above.

Parties shall bear their own costs.