

Devji and ors. Vs. Anwarkhan and ors.

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Court : Madhya Pradesh

Decided On : Jun-21-1988

Reported in : I(1989)ACC445; AIR1989MP101; 1989MPLJ11

Judge : S.K. Dube, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 92, 96, 110B, 110CC and 110D;
[Constitution of India](#) - Article 133(3)

Appeal No. : M.A. No. 141 of 1979

Appellant : Devji and ors.

Respondent : Anwarkhan and ors.

Advocate for Def. : Surjit Singh, Adv.

Advocate for Pet/Ap. : S. Samvatsar, Adv.

Judgement :

S.K. Dube, J.

1. Poor parents, brothers and sisters of the young deceased Ratanlal, aged 22 years, who died in a motor accident on 19-1-1977 by motor bus No. MPU 5039 owned by respondent 1, i.e. Anwar Khan, driven by respondent 2 Prabhusingh and insured at the relevant time, with respondent 4, the New India Assurance

Company Limited, claimed compensation of Rs. 30,000/- by filing an application under Section 110-A of the [Motor Vehicles Act, 1939](#) (hereinafter referred to as 'the Act'). The respondent-non-applicants denied the allegations. After appreciation of the evidence, the learned Tribunal held that the accident occurred due to rash and negligent driving of the driver of the vehicle and held that the driver, the owner and the insurer are liable to pay compensation.

2. The learned Tribunal, strangely enough, awarded the compensation for the death of a 22 years' young and an earning member, only Rs. 4,200/- to the claimants after observing that the widow of the deceased has been remarried. The deceased was earning Rs. 110/- per month and as the widow has remarried, after deducting the expenses on the deceased on self, the dependency was calculated at Rs. 35/- per month. The annual dependency was calculated at Rs. 420/- and the multiplier was fixed of 10 years. Thus the compensation was awarded of Rs. 4,200/- and interest at the rate of six per cent per annum from the date of the application. Aggrieved by this award, the claimants have preferred this appeal and have claimed compensation for Rs. 30,000/-. The owner, the driver and the insurer have filed cross-objections. As it seems, they are not satisfied with the said award of Rupees 4,200/-.

3. Learned counsel for the respondent Insurance Company prayed for time submitted that negotiations are going on for compromise. He placed before me the correspondence between his client, the Insurance Company, and him, for granting an adjournment. The appeal is an old one of 1979 and the correspondence is of April 1988. So far, up to this time, the Insurance Company could not come to any conclusion in respect of the compromise. Hence, it would not be proper to grant any adjournment as the appeal is an old one and the parents now old must get the results of the appeal in their life-time and old appeal must see the light of the day. Hence, prayer for adjournment is refused. The appeal and cross-objections' are heard on merits.

4. At the outset, I may say that the cross-objections of respondents 1, 2 and 4, i.e. the owner, the driver and the Insurance Company, are not maintainable in view of the fact that the award, which was passed by the Tribunal, is within the statutory

limit and the insurer, even after joining the owner and the driver, cannot file an appeal (see the case of this Court reported in *New India Assurance Company Limited v. Smt. Shakuntalabai*, 1987 Jab LJ 462 : (AIR 1987 Madh Pra 244)). Hence, the cross-objections are dismissed.

5. Learned counsel for the appellants submitted that the award of compensation of Rs. 4,200/- is too low for a human life. He submits that by insertion of Section 92-A of the Act, the Legislature has intended that for a human life taken by and in a motor accident, the legal representative must be paid Rs. 15,000/- as minimum compensation. The compensation awarded by the Tribunal is not just and proper compensation in view of the provisions of Section 92-A of the Act. These provisions cannot be lost sight of by this Court while hearing an appeal. He, further, submits that there is constitutional mandate imposing on Courts duty to dispense with substantial justice. While awarding just compensation, though the provisions of Section 92-A of the Motor Vehicles Act are not retrospective in operation, even then, the amount of compensation amounting to less than Rs. 15,000/- would not be proper and it would be too low. He relied on the authorities of this Court in the case of *Shamsher Khan v. M.P. Electricity Board*, 1987 Jab LJ 721 and in the case of *Rukmabai v. Ramlal*, 1988 Acc CJ 351. He, further, relies on the case of the Bombay High Court reported in 1987 Acc CJ 198 : (AIR 1987 Bom 52) (*Oriental Fire and General Insurance Company Limited v. Shantabai*). Learned counsel for the appellants further submitted that the award of the interest by the Tribunal at the rate of 6% per annum from the date of the claim petition, i.e. 13-7-1977, is too low and against the mandate of the Apex Court. The award of interest should have been at the rate of 12% per annum from the date of application. He relied on the cases of the Apex Court reported in *Narcinva V. Kamat v. Alfredo Antonio Doe Martins*, 1985 Ace CJ 397 : (AIR 1985 SC 1281) and *Jagbirsingh v. General Manager, Punjab Roadways*, 1987 Acc CJ 15 : (AIR 1987 SC 70) and a recent judgment of this Court in *State of M.P. v. Ashadevi wd/o Krishna Murari* (Misc. Appeal No. 255 of 1984 decided on 7-5-88 (reported in AIR 1989 Madh Pra 93 (Indore Bench) wherein interest at the rate of 12% per annum has been allowed. As such, the learned counsel submitted that the award of interest should be at the rate of 12% per annum on the amount of compensation of Rs. 15,000/- from the date of application till realisation, certainly giving an

adjustment to the amount of compensation, which has already been paid by the Insurance Company to the claimants.

6. Learned counsel, appearing for the respondents, submitted that the provisions of Section 92-A of the Act cannot be applied in the present case as the accident took place in the year 1977, i.e. on 19-1-77, and the provisions of Section 92-A of the Act cannot be made retrospective in operation and hence, he submits that analogy of Section 92-A of the said Act cannot be invoked by the appellants nor it would be justified to hold the appellants entitled for the award of compensation on the basis of Section 92-A of the Act. To support his contention, he relies on the case of the Rajasthan High Court in *Yashoda Kumari v. Rajasthan State Road Transport Corporation*, Jaipur, 1984 Acc CJ 716 and in the case of the Allahabad High Court in *Ram Mani Gupta v. Mohammad Ibrahim*, 1985 Acc CJ 476. Therefore, his contention is that the award of the learned Tribunal awarding compensation of Rs. 4,200/- by fixing the monthly dependency at Rs. 35/- and the multiplier of 10 years, was just and proper, particularly in the context of the admitted position that the widow of the deceased has remarried and as such she was impleaded as non-applicant No. 3 by the claimants themselves as she was not interested in claiming compensation for the death of her husband. He, further, submitted that for the death of Ratanlal, the amount of compensation awarded to the claimants, who are old parents, was just and proper and compensation is not too low so as to call for any interference in the award, by this Court. In support of his contention, he relies on two cases of the Punjab & Haryana and the Madras High Courts reported in *Kulwant Singh v. Nand Kaur*, 1977 Acc CJ 414 and in *Krishnammal v. Associated Apparel (P) Ltd.*, 1970 Acc CJ 17. In the former case, the compensation awarded was Rs. 3,100/- whereas in the latter case, the compensation awarded was Rs. 4,500/-.

7. As regards award of interest, learned counsel for the respondents submits that the award of interest at the rate of 12% per annum from the date of application on the amount of award will be too excessive as the claim petition is of 1977 and this appeal is pending since 1979 for its disposal for no fault of the respondents and the respondents should not be penalised by payment of interest at the rate of 12% per annum because of the pendency of the cases in this Court. He submits that

had the appeal been decided earlier, then the things would have been different and even the claim amount would not have been awarded as Rs. 15,000/- as Section 92-A of the Act, by way of amendment in the Act, came into force in the year 1982.

8. After considering the arguments of the learned counsel for the respective parties, I have come to the conclusion that this appeal deserves to be allowed to the extent indicated hereinafter because for a human life, a compensation of Rs. 4,200/-, whether the human life is of a poor or a rich person, is too low. It cannot be considered, in the eye of law, as just compensation and that is why the Parliament intended that in no fault liability cases, compensation of Rs. 15,000/- should be paid immediately as compensation and thereafter the matter may be decided on merits for payment to what extent the claimants are entitled to claim compensation, than the minimum. Therefore, the minimum limit fixed by the Parliament of Rs. 15,000/- should also be considered while deciding cases in appeals arising out of the cases, wherein accident occurred before the insertion of Section 92-A in the Act. The provision of Section 92-A of the Act in a piece of welfare legislation, has to be interpreted liberally and its intendment and analogy can be applied by the High Courts while deciding appeals or cases, on the principle that compensation on merits, which is largely based on guess work, must be in accord with the principle that compensation for loss of life, if not more, has to be at least Rs. 15,000/-. Hence, without going into the calculation of dependency and the multiplier adopted by the learned Tribunal, which, in my opinion, is not correct as it can be safely presumed that a member, who has got large members to support, having low income, cannot afford to spend much on himself and on his wife, I need not dilate on the calculations but, as stated above, I rely on the authorities of this Court in cases of Shamsheer Khan (1987 Jab LJ 721) (supra) and Rukmabai (1988 Acc CJ 351) (supra) for awarding the compensation of Rs. 15,000/- instead of Rs. 4,200/-, as awarded by the learned Tribunal.

9. As regard interest, the mandate of the Apex Court is to award interest at the rate of 12% per annum. As such, whatever the cause may be for the delay or pendency of cases, the award of interest has to be at the rate of 12% per annum from the date of application; and for that I am bound by the mandate of the Apex

Court reported in 1985 Acc CJ 397 : (AIR 1985 SC 1281) (supra), 1987 Acc CJ 15 : (AIR 1987 SC 70) (supra) and the judgment of the Division Bench of this Court recently delivered in Misc. Appeal No. 255 of 1984 (supra) decided on 7-5-88 (reported in AIR 1989 Madh Pra 93) at Indore Bench, to which I am a party.

10. Hence, the appeal is allowed to the extent that the claimants shall be entitled to the compensation of Rs. 15,000/- (fifteen thousand) giving an adjustment to Rs. 4,200/- which the claimants have already received. The claimants shall also be entitled to receive interest at the rate of 12% per annum from the date of application under Section 110-A of the Act, on the amount of compensation, i.e. Rs. 15,000/-, certainty giving adjustments to the interest at the rate of 6% per annum on the amount of Rs. 4,200/- awarded by the Tribunal till the date of payment.

11. Learned counsel for the respondent Insurance Company submits that the leave to the respondent be granted for filing an appeal before the Hon'ble Supreme Court as was granted in the case of Shamsheer Khan (1987 Jab LJ 721) (supra) as the question involved in this case is the same and is of general and public importance. In my opinion, the leave by a single Judge of the High Court, while deciding cases singly, cannot be granted. The High Court can issue a certificate for appeal to the Supreme Court only when it is satisfied that the conditions of Article 132 or Article 133 or Article 134 of the [Constitution of India](#), as the case may be, are satisfied. Article 133(3) of the [Constitution of India](#) puts a restriction on a single Judge for granting leave to appeal to the Supreme Court, which is quoted as under : --

'133. Appellate jurisdiction of Supreme Court in appeals from High Court in regard to Civil matter --

(1) and (2)

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

As such a certificate cannot be issued by reason of Clause (3) of Article 133 of the [Constitution of India](#) by a single Judge. The fact, that in a similar case decided by this Court reported in 1987 Jab LJ 721 (supra), certificate has been granted by a learned single Judge of his own motion, cannot empower me to issue a certificate under Article 133(1) of the Constitution. The restriction placed by Clause (3) of Article 133 of the Constitution cannot be got over by relying upon the judgment of a learned single Judge reported in 1987 Jab LJ 721. The Apex Court held in case of State Bank of India v. State Bank of India Employees Union reported in, (1988) 1 UJ (SC) 171 : (AIR 1987 SC 2203) that a single Judge is not empowered to issue the certificate under Article 133(3) of the Constitution in a case decided by him. The restriction placed by Clause (3) of Article 133 of the Constitution could not be got over by relying upon the order of a Division Bench. As such, the Apex Court, after considering the provisions of Articles 132, 133 and 134A, has held that powers under Article 134A do not constitute an independent provision, in which a certificate can be issued. These powers are ancillary to Articles 132(1), 133(1) and Article 134A(1)(c) of the Constitution. As such, the High Court can issue a certificate only, when it is satisfied that the conditions in Article 132 or Article 133 or Article 134 of the Constitution, as the case may be, are satisfied. Hence, the question of grant of leave or certificate for filing an appeal to the Supreme Court by me does not arise. The respondents are free to take steps according to law, if so advised. The appeal is allowed with costs of Rs. 500/- (Five Hundred). Counsel's fees Rs. 500/- (Five Hundred), if certified.

12. The respondent Insurance Company shall deposit the amount of award, so enhanced, and interest within six weeks from today. This period of deposit shall not carry any interest. In case the amount is not deposited in time, the appellants shall be entitled for the interest at the rate of 12% per annum till the period of deposit.