

Santosh and ors. Vs. General Manager, M.P.S.R.T.C. and anr.

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Court : Madhya Pradesh

Decided On : Oct-13-1988

Reported in : 1(1989)ACC242

Judge : P.D. Mulay and ;K.L. Shrivastava, JJ.

Appellant : Santosh and ors.

Respondent : General Manager, M.P.S.R.T.C. and anr.

Judgement :

K.L. Shrivastava, J.

1. This appeal Under Section 110-D of the Motor Vehicles Act, 1939 (for short 'the Act') is directed against the award dated 30-11-1984 made by the Motor Accidents Claims Tribunal, Mandsaur in Claim Case No. 46 of 1980.

2. It is not in dispute that on 24-5-80 when the deceased Babulal was travelling as a passenger in the bus bearing registration number C.P.F. 9160 owned by the M.P.S.R.T.C. Bhopal and driven by its driver the respondent No. 2 Nanuram, he sustained injury on his head and on his face as a result of those parts of his body coming into contact with a piece of wood protruding from a bullock-cart while the bus was crossing the same near Harkhyakhal-Neemuch-Mhow road. Subsequently as a result of the injuries, Babulal met his death. An ex gratia payment of Rs. 1000/- has been made to the appellants.

3. The appellant No. 5 is the mother of the deceased Babulal. The appellants 1 to 4 are his minor children. They along with Gangabai the widow of the deceased who died during the pendency of the claim petition had filed it Under Section 110-A of the Act on 11-9-80 laying a claim in the sum of Rs. 3,92,000/- against the driver and the owner of the offending bus stating that the accident was occasioned due to rash and negligent driving too close to the bullock-cart. The protruding piece of wood had, through the window of the bus, injured the deceased. According to the claim petition the deceased aged 35 years was running an auto workshop and was having a monthly income of Rs. 800/- and was maintaining them.

4. The claim was contested by the respondents. According to them the bus was being driven with proper care and the accident must have occurred as a result of the deceased having taken out his head through the window of the bus. The averments as to the age of the deceased and his monthly income were also controverted.

5. At the conclusion of the trial the learned Tribunal held that the accident was occasioned due to the negligence of the bus-driver. It further held that at the time of his death the deceased was aged 35 years and was earning Rs. 700/- per month by doing the work of auto repairing. The monthly dependency was assessed at Rs. 250/- and the multiplier of 15 was applied. In view of the death of Gangabai and the age of Parvatibai, the Tribunal held that the appellants were deprived of Rs. 35,000/-. Making deduction of Rs. 6000/- on account of lumpsum payment and another deduction of Rs. 6000/- due to uncertainties of life, the appellants were held entitled to Rs. 23,000/-. A compensation in the sum of Rs. 1000/- towards mental pain and suffering to the appellants was allowed. After another deduction due to ex-gratia payment, ultimately award in the sum of Rs. 23,000/- has been made. On the aforesaid sum interest at the rate of 4% per annum from the date of application till realisation was also allowed.

6. The contention of the learned Counsel for the appellants in this Court is that the learned Tribunal has failed to follow the correct principles in the determination of compensation which is too inadequate. It is urged that the rate at which, interest

has been awarded also deserves to be enhanced.

7. The contention of the learned Counsel for the respondent who have filed cross-objection is that the amount of compensation is excessive and that the award is liable to be set aside.

8. The point for consideration is whether the award deserves to be interfered with in appeal.

9. As pointed out in the decision in *A.K. Surendran v. Ganpathy* 1987 ACJ 432 an application Under Section 110-A of the Act can be based Under Sections 1A and 2 of the Fatal Accidents Act and that the cause of action under the two are distinct and different. While under Section 1 damages are recoverable for the benefit of the person mentioned therein, Under Section 2 compensation goes to the benefit of the estate. Under the said Section 2, damages can be claimed inter alia, for loss of expectation of life. Where the person entitled to benefit under the two sections is the same, he cannot be permitted to claim twice over the same loss.

10. Section 110-B of the Act provides that the Tribunal is to determine the just compensation. The Act does not lay down any method for its determination and the same has to be done on the principles in the law of Torts as the claim for compensation on account of negligence in respect of motor vehicles is a breach of that law.

11. Compensation is thus claimed under the Act for pecuniary loss and non-pecuniary loss. Loss on account of mental and physical pain is non-pecuniary loss. So far as non-pecuniary loss is concerned, guess work is the only method.

12. In the decision in *State of M.P. v. Davi Rawat* 1981 JLJ 42 pointing out that in *M.P.S.R.T. Corporation v. Sudhakar* AIR 1977 SC 1189 the method of assessing damages by finding out the amount of annual dependency i.e. the multiplicand and the number of years' purchase i.e. the multiplier has been approved by the Apex Court it has been observed thus in paragraph 6:

The object in assessment of damages is to find out the capital sum required to purchase an annuity of an amount equal to the annual value of the benefit with

which the deceased had provided the dependents while he lived and for such period as it could reasonably be estimated they would have continued to enjoy them but for his premature death. Such a capital sum is expressed as the product of multiplying an annual sum which represents the dependency by a number of years' purchase. This latter figure is less than the number of years which represents the period for which it is estimated that the dependents would have continued to enjoy the benefit of the dependency, since the capital sum will not be exhausted until the end of that period and in the meantime so much of it as is not yet exhausted in each year will earn interest from which the dependency for that year could in part be met.

13. From the decision in A.K. Surendran's case (supra) the following excerpt with respect to the multiplier to be adopted and the guess work involved in the calculation of compensation may profitably be reproduced:

The multiplier necessarily must remain flexible figure for the Judge to decide and reasonably be determined by having regard to the deceased's expectation of life, his age and health, the probable duration of his earning capacity, the possibility of his earning capacity being expanded or shrunk in the future, the expectation of life of the dependants and the probable duration of the continuance of the deceased's assistance to the dependants. The possibility of his liberality might have grown or wilted is also a relevant consideration.

Much of the calculation necessarily must be in the realms of hypothesis 'and in that region arithmetic is a good servant but a bad master' since there are so often many imponderables. In every case it is the over-all picture that matters and the court must try to assess as best as it can the loss suffered by each dependant having regard to all the circumstances but subject to the fact that 'it is the wood that has to be looked at, and not the individual trees.

14. As pointed out in the decision in Orissa Road Trans. Co. Ltd. v. Umakanta Singh 1987 ACJ 133 out of the three methods of determination of compensation any one can be adopted depending upon the facts and the circumstances of the case and that the interest theory has been adopted by the Supreme Court in the decision in Pushpa Thakur v. Union of India 1984 ACJ 559.

15. In the decision in *Jyotsna Dey and Ors. v. State of Assam* 1987 ACJ 172 the Supreme Court has held that the span of life should have been taken to be 70 in view of high rise in life expectancy. The decision further points out that the fact that compensation is being paid at a time and uncertainties of life are a relevant factor for deduction.

16. Compensation can be claimed for the pain and suffering of the deceased if he had live for some period after the accident. But as pointed out in *Subhan Alli's* case (1984 M.P. W.N. 434) the dependants of the deceased are not entitled to compensation for mental agony to them. In the decision in *Sohan Lal v. Bal Swaroop Bal Bhatnagar* 1987 ACJ 113 it has been held that compensation on account of loss of love, affection and consortium under the heading loss of love and affection of spouse children and parents, can be awarded.

17. In the decision in *Pursharth Transport Company's* case 1981 M.P.W.N. 19 it has been held that as the determination of compensation also involves guess work, compensation to the L. Rs. should be conventional and this is the reason why rule of multiplier has been evolved. In the decision in *Samindar Kaur's* case 1987 ACJ 7 the import of the term 'compensation' has been explained and it has been pointed out that the word 'just' occurring in the section is of a very wide amplitude. It is true that a claimant should not be permitted to make a fortune out of mis-fortune that has be-fallen him but as pointed out by the Supreme Court in *Concord of India Insurance Co. Ltd. v. Nirmaladevi* 1980 ACJ 55 the determination of the quantum of compensation must be liberal, not niggardly since the law values life and limb in free country in generous scales.

18. A bus-driver owes a duty to the passengers to drive the motor vehicle at a safe distance from other vehicles and a passenger cannot be held guilty of contributory negligence when in normal course any portion of his body is out side the bus. In this connection the decision in *Suresh Kumar's* case : AIR 1984 MP155 may usefully be perused.

19. Assuming for the sake of argument that a passenger taking out his head out of the window of the bus would constitute contributory negligence, it is pertinent to point out that in the written statement the respondents did not come forward with a

definite case that the deceased had himself taken out his head for spitting and the defence evidence to this effect has, therefore, rightly been discarded as an after-thought. In the ultimate analysis, we find that on the material on record the finding by the Tribunal on the point of negligence is correct.

20. The evidence of Dr. Kulkarni (AW 2) that the deceased was aged 35 years remains unchallenged and the conclusion on the point is held to be correct.

21. It is pertinent to point out that in the written statement it has not been denied that the deceased was running the Gopal Auto Works. Even Nanuram (NAW-1) has at one place stated that he had occasion to go to the workshop of the deceased. The version of Gangabai as AW 4 is that Khemraj, the brother of the deceased, also used to work in the garage. There is no independent evidence to corroborate the version of Gangabai at the trial that her deceased husband used to pay her Rs. 800/- to Rs. 900/-per month for household expenses. Allowing margin for exaggeration, as the deceased, it appears, was the sole bread-earner, it may safely be held that excluding expenses on the deceased, the monthly dependency was Rs. 400/-. The learned Tribunal certainly went wrong in assessing it at Rs. 250/-.

22. On a careful consideration of the facts and circumstances of the case we are of the view that taking the annual dependency at Rs. 400/- and applying the multiplier of 15 would constitute just compensation. In the instant case the accident occurred on 24-5-80. The victim died later and post-mortem was conducted on 25-5-80. Allowing deductions on account of lump sum payment uncertainties of life and ex-gratia payment, award of Rs. 60,000/- towards compensation inclusive of all claims would, in our opinion, be just and proper. In this connection the decisions in *Shivlal v. Rukmabai* and Ors. 1987 ACJ 341, *United Insurance Co. Ltd. v. Ratanamma* 1987 ACJ 435 and *Jyotsna Day's case* (supra) are pertinent.

23. The amount of compensation aforesaid, with due regard to the respective age, is apportioned as under amongst the appellants:

Name of the appellant Amount1. Santosh Rs. 8,000/-2. Ku. Kala Rs. 20,000/-3. Panna Rs. 10,000/-4. Sunil Rs. 12,000/-5. Parvatibai Rs. 10,000/-

24. The aforesaid compensation would carry interest at the rate of 12% per annum from the date of application till realisation. The amount apportioned to the minor appellants shall be deposited by the Tribunal in any Nationalized Bank for the period of their minority at the maximum available rate of interest. They shall be entitled to this amount on their attaining majority. The amount of interest shall be paid quarterly to their next friend every quarter. Subject to the order of the Tribunal the next friend shall also be entitled to withdraw reasonable amount from the deposit for the benefit of the minors. The amount apportioned to the appellant No. 5 shall be paid to her by the Tribunal.

25. In the result the appeal is partly allowed in the terms stated above. The cross-objection is dismissed. The respondents shall bear their own costs and shall pay to the appellants the latter's costs in this appeal. Counsel's fee Rs. 500/-, if certified. The amount of costs shall be payable to the next friend of the appellants.