

Vimla Devi Khemka and ors. Vs. General Manager, Madhya Pradesh State Road Trans. Corporation and anr.

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Court : Madhya Pradesh

Decided On : Nov-13-1995

Reported in : 1996ACJ876

Judge : R.P. Awasthy and ;Rajeev Gupta, JJ.

Appeal No. : M.A. No. 39 of 1986

Appellant : Vimla Devi Khemka and ors.

Respondent : General Manager, Madhya Pradesh State Road Trans. Corporation and anr.

Advocate for Def. : Aditya Sanghi, Adv.

Advocate for Pet/Ap. : Archana Nagaria, Adv.

Disposition : Appeal allowed

Judgement :

R.P. Awasthy, J.

1. Claimants, Vimla Devi Khemka and her three issues, have filed the present appeal for enhancement of the amount of Rs. 54,000/- (Rupees fifty-four

thousand) with interest at the rate of 6 per cent per annum from the date of petition till the said amount is deposited in the Tribunal, which has been awarded by the Tribunal for the accidental death of Rajendra Prasad Khemka, who was the husband of the claimant No. 1, Vimla Devi Khemka and father of the claimant Nos. 2 to 4, Annapurna Khemka, Mamta Khemka and Munna. Madhya Pradesh State Road Trans. Corporation has also filed appeal against the same award challenging the finding of holding the driver of its bus to be rash and negligent in driving the violating bus. Both of the said appeals shall be simultaneously disposed of by this single order.

2. Claimants' contention is that on 10.6.1981 driver Shankar Singh was bringing the violating bus from Rewa towards Satna driving it in a rash and negligent manner. The said bus was mechanically so defective that it was not roadworthy. When the said bus reached on the road near village Kothar, the jeep, on which Rajendra Prasad and other passengers were travelling, came there from the opposite direction. The jeep was being driven by its driver in a slow and cautious manner. When the jeep was about to cross the culvert near the said village, the driver of the jeep gave the signal of crossing the said culvert first, by flashing the lights of the said jeep. In spite of the said signal being given by the driver of the said jeep, the driver of the said bus did not or could not stop the said bus and the bus also entered the said narrow culvert and dashed against the jeep. The bus was being driven in such a rash manner that it dragged the jeep for about one furlong towards the direction in which the bus was proceeding. Immediately after the accident taking place, the driver of the said bus got down from it and fled away. A report regarding the said accident was lodged at police station Chorhata, District Satna, where a case for committing offences punishable under Sections 279, 338 and 304A of the Indian Penal Code was registered against the driver of the bus.

3. Rajendra Prasad Khemka, who was aged about 30 years at the time of accident and was dealing in textile material under the name and style of 'Rajendra Fancy Stores', Satna, died at the place of the incident itself. Apart from the said business, he was also doing the work in the shop by name Sitaram Biharilal. He was earning Rs. 15,000/- per annum. He would have survived for 35 years more. The claimants

made a claim for loss of love and consortium also. A total claim of Rs. 3,30,000/- was made by them.

4. The non-applicants in the Claims Tribunal (who shall be referred as non-applicants for the purpose of convenience in this award) denied the said allegations and submitted that the accident was solely the result of rash and negligent driving of the jeep. As the accident did not take place within the territorial jurisdiction of the Revenue District of Satna, the relevant Accidents Claims Tribunal had no territorial jurisdiction to try the claim of the claimants. Since the owner, driver and insurer of the jeep were not made parties to the said petition, the petition suffered from the defect of non-joinder of necessary parties.

5. After recording evidence in the case, the trial court held that the driver of the relevant bus was solely responsible for the accident and only on account of his rash and negligent driving of the bus, the accident took place. Regarding quantum of compensation, the learned Member of the Tribunal came to the finding that the annual income of Rajendra Prasad Kheinka was Rs. 15,000/-. It further held that since after the death of Rajendra Prasad, the shop which was being run by Rajendra Prasad had been leased out on rent of Rs. 500/- per mensem, an amount of Rs. 6,000/- was liable to be deducted from the said amount of annual income of the deceased. On deducting the said amount, income of Rajendra Prasad was calculated at the rate of Rs. 9,000/- per annum. The Claims Tribunal had further held that Rajendra Prasad was spending Rs. 450/- on himself and was contributing Rs. 300/- per mensem only towards his family and thus, he was contributing Rs. 3,600/- per annum towards the maintenance of the family consisting of the claimants, (four in number). Applying a multiplier of 15 the Claims Tribunal awarded a total amount of Rs. 54,000/- to the claimants.

6. It has been argued for the claimants that the amount of Rs. 6,000/- ought not to have been deducted from the annual income of Rajendra Prasad. It should have been held that out of the total earning, Rajendra Prasad was spending only 1/3rd of the total earning on himself and was contributing 2/3rd part of his total income towards the maintenance of his family. Since Rajendra Prasad was aged about 30 years, a multiplier of at least 25 ought to have been applied and interest at the rate

of 18 per cent or at least 12 per cent per annum should have been awarded by the Claims Tribunal.

7. In reply, it has been argued that the Tribunal has erred in holding that the driver of the bus was negligent. However, it was fully justified in deducting the amount of income being received by leasing the shop on rent. The amount awarded by the Tribunal is proper and adequate and does not call for any interference by the appellate court. The rate of interest applied by the Tribunal is also proper.

8. The contention of non-applicant Corporation that the Claims Tribunal erred in holding that the driver of the bus was solely responsible for the accident, has absolutely no substance. Even if it be considered for the sake of argument that the driver of the jeep was also to some extent negligent in driving the said jeep, it has to be seen that as far as Rajendra Prasad, a passenger in the jeep, is concerned, it was a case of composite negligence on the part of both the drivers of accident vehicles. Therefore, the said aspect is not very relevant for the purpose of the present appeal. On the other hand, we are satisfied that the trial court was perfectly justified in holding that the accident was the sole result of rash and negligent driving of the violating bus. Consequently, the appeal filed by the Madhya Pradesh State Road Trans. Corporation is disallowed in its totality.

9. In view of the pronouncement in the authorities reported in *Chameli Wati v. Delhi Municipal Corporation* 1984 ACJ 134 (Delhi) and *Chander v. Bhawani Singh* 1989 ACJ 106 (Rajasthan), *Mariam v. Delhi Transport Corporation* 1989 ACJ 1041 (Delhi) and *Damyanti Devi v. Sita Devi* 1972 ACJ 334 (P&H;), it appears to be a settled principle of law that the income, by leasing out the shop belonging to Rajendra Prasad after his death, ought not to have been deducted.

10. In this regard observation made by the Division Bench of Punjab and Haryana High Court in the authority reported in *Damyanti Devi v. Sita Devi* 1972 ACJ 334 (P&H;), deserves to be respectfully referred:

In every case the nature and extent of the assets left by the deceased is to be determined, that is, if the assets are such of which benefit is being taken by or was available to the family during his lifetime, the value of those assets has not to be

taken into consideration in mitigation of the damage. The accelerated succession to those assets does not bring any additional benefit to the heirs which may be liable to be set off against the loss occasioned by the death. Again if the assets are such which were being created by the deceased out of his savings to be utilised for the benefit of the members of the family on various occasions like marriage, higher education of the children, etc., those assets should also be kept out of consideration while determining the just compensation. Such assets cannot be said to confer any undue or untimely benefit on the legal representatives because of the death of the person on whom they were dependent. In every case it has been emphasised that damages have to be determined on the facts of that case and in such calculations, conjectures and surmises also play their part. Under Section 110-B of the Motor Vehicles Act, the Tribunal has been made the judge of the amount of compensation which is considered to be just and while determining just compensation, the Tribunal has to take into consideration all relevant factors concerning the deceased and his legal representatives.

11. Now, in the present case, the shop was being run by Rajendra Prasad during his lifetime and, therefore, the advantage and benefit of the building in which the said shop was housed was available to the claimants. Consequently, the accelerated succession did not bring any additional benefit to the legal representatives of Rajendra Prasad. Therefore, the amount of rent being received on leasing out the said shop after the death of Rajendra Prasad Khemka could not have been deducted from his earnings.

12. The facts of the case reported in *Manager, Ardee Polypack Industries v. Nidgiri Satyappa Pujari* 1993 ACJ 1206 (Bombay), are obviously distinguishable. In the said case, the claimant was the brother of the deceased. (The deceased was unmarried at the time of accident). Under the given circumstances, the acceleration of interest was considered as a factor which required deduction in the amount of compensation being awarded to the claimant, who was the brother of the deceased. Therefore, the said authority is not applicable on the facts of the present case.

13. Consequently, it is held that annual earning of Rajendra Prasad Khemka was Rs. 15,000/-, out of which deceased used to spend Rs. 5,000/- per annum on himself and used to contribute Rs. 10,000/- towards maintenance of his family. Looking to the uncertainty of life, the multiplier of 15 applied by the Tribunal appears to be just and proper. The Tribunal ought to have had, therefore, awarded Rs. 1,50,000 by way of compensation to the claimants. In view of the Full Bench authority reported in *Prakramchand v. Chuttan* 1991 ACJ 1051 (MP), rate of interest on the amount awarded by way of compensation should invariably be 12 per cent per annum. Consequently, it is ordered that the non-applicant Madhya Pradesh State Road Trans. Corporation shall pay Rs. 1,50,000/- by way of compensation to the claimants. The Madhya Pradesh State Road Trans. Corporation shall further pay simple interest on the said amount at the rate of 12 per cent per annum from the date of application till the said amount is deposited in the Claims Tribunal. Out of the said amount, a set-off shall be given for the amount already deposited by the Madhya Pradesh State Road Trans. Corporation. The Madhya Pradesh State Road Trans. Corporation shall pay costs of both the courts to the claimants. Pleader's and advocate's fee Rs. 500/-, if certified.

14. Out of the amount deposited in the Claims Tribunal, Rs. 15,000/-, Rs. 15,000 and Rs. 15,000/- shall be deposited in fixed deposits in the names of Annapurna Khemka, Mamta Khemka and Munna for the periods of three years, four years and seven years respectively in some nationalised bank of the choice of claimant No. 1. Claimant No. 1 shall be entitled to receive the amount of recurring interest on the said amount deposited in the shape of fixed deposits in the said nationalised bank, but shall not be entitled to withdraw the principal amount or to obtain loan on the basis of the security of the said amount deposited in the names of Annapurna Khemka, Mamta Khemka and Munna. The claimant No. 1 shall be entitled to withdraw the entire remaining amount.

15. Thus, the appeal filed by the claimants is substantially allowed, while the appeal filed by the Madhya Pradesh State Road Trans. Corporation is disallowed in its totality.