

Nirmal Singh and anr. Vs. C.M. Java and ors.

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Court : Delhi

Decided On : Sep-29-1995

Reported in : 1997ACJ44; 1995IVAD(Delhi)307; 61(1996)DLT84

Judge : C.M. Nayar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rules 22, 32 and 33;
[Motor Vehicles Act, 1939](#) - Sections 95(2)

Appeal No. : First Appeal No. 268 of 1981 and Civil Miscellaneous Appeal No. 854 of 1983

Appellant : Nirmal Singh and anr.

Respondent : C.M. Java and ors.

Advocate for Pet/Ap. : Sangeeta Jain,; S.C. Sharda,; P.P. Malhotra and;

Judgement :

C. M. Nayar, J.

(1) The present appeal is directed against the award dated May 7,1981 passed by Shri S.P.Saberwal, Judge, Motor Accident Claims Tribunal Delhi. The respondents-claimants have also filed cross-objections (C.M.No. 854/83). The appeal was been filed by the owner and driver of the offending vehicle and the insurer,New India Assurance Company Ltd. is imploded as aco-respondent along

with the claimants.

(2) The claim petition was filed by the widow and two minor children as legal heirs of the deceased Shri V.Vasudevan, under Section 10-A of the Motor Vehicles Act claiming compensation amounting to Rs.six lakhs. The deceased sustained fatal injuries in an accident that took place on February 22, 1975 at about 5.15 p.m. at G.T. Road crossing near Narrow-Gauge railway line, Shahdara. The deceased was sitting on the pillion seat of two wheeler scooter No. DLW-3606 and was coming from his duty in M/s. Air Reduction Company Ltd, Plot No. 56, Site No. 4, Sahibabad, Ghaziabad for going to Kashmere Gate Bus stand in order to get a bus for his house situated at Gurgaon. The said scooter was being driven by one of his employees, namely, Jagdish Chandra and it was pleaded that the scooter was being driven with due care and caution and on correct side of the road at a normal speed when truck bearing No. DLL-9885, which was being driven by appellant No.2, rashly and negligently struck against the said scooter from behind. It was further alleged that the driver did not blow any horn and the truck was being driven at a very high speed when it hit the scooter from behind As a result to the injuries sustained in the accident, Shri Vasudevan died on the spot The deceased was 35 years of age and was stated to be earning Rs.2400.00 plus Rs.450.00 as allowances per month and was Chief Engineer in the employment of M/s Air Reduction Company Ltd.The offending truck was insured with New India Assurance Co. Ltd, respondent No. 4 in this appeal.

(3) The claim petition was resisted by the appellant, and respondent No. 4. The appellants filed joint written statement whereas separate written statement was filled by the insurer, respondent No.4 though they were all represented in the Tribunal by the same Counsel. It was denied that the accident took place due to the rash and negligent driving on the part of appellant No 2. The said appellant was driving the vehicle at a slow speed and was coming from Ghaziabad Border to Delhi and when he crossed the railway crossing, Jagdish Chandra came from behind the truck and without blowing any horn or giving signal tried to over-take the truck from its wrong side i.e. left side when a Dtc bus came from the opposite side and appellant No. 2 in order to give way to the said bus turned his truck to left and at that time the scooter driver who was overtaking the truck from the left lost

his balance and control and the scooter struck with the left middle of the truck and it fell down with both its riders. The scooter driver, namely, Jagdish Chandra fell down on his left side but the deceased, who was a pillion rider, fell on the right side and he was crushed under the wheels of the truck.

(4) On the pleadings of the parties the following issues were framed :

1. Whether the deceased sustained fatal injuries in an accident due to rash and negligent driving of truck No. DLL-9885 on the part of respondent No. 1? 2. Whether the accident took place sheerly on account of negligence on the part of Shri Jagdish Chandra? If so, to what effect 3. To what amount of compensation, if any, are the petitioners entitled and from whom 4. Whether the claimants are the legal representatives of the deceased 5. Whether the respondents are not liable for reasons stated in the preliminary objections of the written statement 6. Whether the petition is bad for non-joinder of necessary parties 7. Relief.

(5) The respondents-claimants are the widow and minor children of the deceased and were, therefore, held as legal representatives and competent to file the claim petition. The question of negligence was next considered. The eye witnesses to the occurrence were examined. PW1 Latoor Das has deposed that on February 22, 1975 at about 5.15 p.m. he saw the accident between the scooter and the truck. The accident took place before the railway crossing of the narrow gauge line while coming from Ghaziabad towards Shahdara at about 8/10 yards from the railway crossing. He deposed that two-wheeler scooter was coming from the side of Ghaziabad towards Shahdara on his correct side at a show speed when the truck in question was coming at a very fast speed and while trying to overtake the scooter, struck with its front portion at the back of two-wheeler scooter. As a result of the impact Shri Jagdish Chandra, who was driving the scooter and the deceased Shri V. Vasudaven fell on the ground in between the front two wheels of the truck on the right hand side. He further deposed that rear wheel of the truck came on the half body of the deceased and people at the spot shouted at the truck driver to stop the truck. Meanwhile Jagdish Chandra came out from beneath the truck of the left rear wheel and along with other persons at the spot shouted at the driver and asked him to reverse the truck so that the deceased, who was alive at

that time, could be taken out. The truck moved ahead in order to run away and ran over the body of the deceased which got entangled on the left rear wheel and the truck dragged the same to a distance of about 72 to 75 yards ahead. Meanwhile the deceased had died on the spot. PW2 Sangram Singh corroborated the averments made by PW1. He reiterated that the truck driver in order to run away drove the truck ahead at a fast speed and ran over the body of the deceased with left rear wheel which resulted in the death of the deceased. The police came on the spot within 15-20 minutes and took the vehicle into possession, prepared the site plan and photographs were taken at the scene of accident. PW5 is the Sub Inspector Bachan Singh who was the Investigating Officer. He deposed that he inspected the spot and prepared the site plan with its correct marginal notes. Copy of the same is Ex.PW5/A. He prepared the inquest report and sent the body of the deceased for post-mortem. The plea of the appellant-driver that Dtc bus was coming from opposite direction and the truck driver in order to give way to the said bus turned his truck to the left side when the scooter driver, who was in the process of overtaking the truck from the leftside, lost balance which resulted in the accident, was not accepted by the Tribunal. The driver was not produced in the witness box in support of the defense. There was valid ground for drawing adverse inference against the driver who was not examined in support of the defense. (Madhya Pradesh State Road Transport Corporation v. Vaijanti and Others : AIR 1995 MP122 . The Tribunal, on appreciation and appraisal of evidence of the eye witnesses, came to the finding that the accident which resulted in the death of Shri V. Vasudevan took place due to rash and negligent driving of truck No DLL-9885 on the part of appellant No. 2, Santokh Singh. It was further held that there was absolutely no negligence on the part of Jagdish Chandra, who was driving the scooter. I have perused the evidence on record. The findings of the Tribunal are based on correct appreciation and cogent grounds. There is no infirmity in the same which are, accordingly, affirmed.

(6) The assessment of compensation was dealt with in issue No.3. The deceased was held to be about 35 years of age on the date of accident which took place on February 22,1975. The learned Judge further considered the history of longevity in the family and taking that into account and the health of the deceased, it was held that the deceased would have lived at least up to the age of 65 years, if not more,

if he had not died in the aforesaid accident.

(7) The contribution of the deceased to his family was next considered. It was brought in evidence that prior to his employment with Air Reduction Company Ltd., the deceased was employed as Chief Engineer in Industrial Gases Limited, Ranchi on a salary of Rs. 2500.00 per month. He was in service for 12 years and worked in various places i.e. Bhopal, Ranchi, ModiNagar prior to joining M/s Air Reduction Company Ltd. where he was getting Rs. 2400.00 per month plus Rs. 450/- as allowance in the scale of Rs. 2400-15-3000-ER 200-4000. The widow of the deceased was examined as PW6 and she gave details of his income, as referred to above. PW7 R.P. Singh, Assistant Manager in Air Reduction Company Ltd. deposed that the deceased was working as Chief Engineer in the Company in the year 1975. He further stated that he had worked in the Company only for 3 days. The deceased possessed Diploma in Chemical Engineering and had completed the prescribed course of instructors in that field and was awarded the title of 'Licentiate in Chemical Engineering' by Technological Diploma Examination Board, in the facts of the case and on the basis of evidence on record, it was held by the Tribunal that the income of the deceased on the date of accident, while working as Chief Engineer in M/s. Air Reduction Pvt. Ltd, was Rs. 2400.00 per month. The payment of Rs. 450.00 as allowance was also not disbelieved but it was pointed out that the deceased might have been required to spend such amount for official work.

(8) The Tribunal then considered the deductions from the salary of the deceased towards General Provident Fund and premium towards Life Insurance Policy, Income Tax etc. The exact amount of payments, as mentioned above, were not ascertained as the learned Judge noted that the widow of the deceased had deposed that the deceased did not have any bank account. The testimony of the widow to this effect was treated as completely false. It was inferred that payment of salary to the Executives of the Company are made by cheques. The non-production of Income-tax Returns and the certificates of employment of previous employers was treated as an adverse inference against the claimants. In view of the fact that the deceased must have contributed towards Provident Fund, premium towards Life Insurance Policy etc., the Tribunal assessed these figures

on imaginary and conjectural basis and proceeded to deduct the amounts from the salary of the deceased under those heads. It may be interesting to reproduce the following findings of the Tribunal :

'KEEPING in view the income of the deceased and the fact that the petitioner deliberately withheld information by not filing the Income Tax Return / Assessment Order, it is reasonable to expect that the deceased must have contributed 15th of the salary towards Provident Fund. As such, the contribution of the deceased towards Provident Fund in the circumstances, should be held to be Rs. 480.00 per month. Similarly, it is reasonable to expect that the deceased who was a top executive in Air Reduction Company Limited must have been insured at least to the extent of Rs. 30,000.00 and if not more, he must have paid Rs. 200.00 per month as premium. It is also reasonable to expect that the deceased would have made contribution of at least Rs. 300.00 per month in his Bank Account in order to save amount for rainy days and for incurring the expenditure on the marriage of two minor children, namely, Shri J.D. Navin and Miss. J.D. Navin. It is reasonable to expect that he must have saved at least Rs. 300.00 per month particularly when his salary was Rs. 2,500.00 per month. The petitioner deposed that the deceased used to get Rs. 2,500.00 per month in Industrial Gases Limited, Ranchi, and Rs. 2,000.00 in Bombay firm and Rs. 1,500.00 per month in Modi Pur and Rs. 700.00 per month in Bhopal. The petitioner deposed that the deceased had worked for 12 years. Even if the saving in the Bank are taken on average of Rs. 150.00 per month, it is reasonable to expect that he must have saved at least Rs. 20,000.00 . In case, the deceased had deducted 1/5th of the salary towards Provident Fund and paid Rs. 200.00 towards premium of Life Insurance Policy, the tax including surcharge on the salary of Rs. 2,400.00 per month, must have been not less than Rs. 220.00 per month. If the deduction of Rs. 480.00 towards Provident Fund (1/5th of the total salary of Rs. 2,400.00 per month), Rs. 200.00 towards Life Insurance Policy premium Rs. 220.00 towards I.T and S.T. and Rs. 300.00 towards bank savings are taken, the amount towards deductions would come to Rs. 1,200.00 . As such, the carry-home salary of the deceased on the relevant date was not more than Rs. 1,200.00 per month.'

The carry-home salary of the deceased on the above basis was held to be Rs. 1200.00 per month from which an amount of 1/3rd of the salary was deducted for personal expenses and the dependency was fixed at Rs. 800.00 per month i.e. Rs. 9600 / - per annum. The multiplier of 16 years was adopted as appropriate to the age of the deceased giving an award of Rs. 1,53,600.00 . The Tribunal proceeded to commit another error and again used an arbitrary and conjectural basis to make further deductions, thus reducing the award of compensation. The following paragraph in the award reads as follows :

'AS regards deduction, it may be pointed out that in my aforesaid findings, it has been held that the deceased must have been at least insured for Rs. 30,000.00 and he must have saved Rs. 20,000.00 in the bank. It may be pointed out that in case 1976 A.C.J. 407 Prem Devi Pandey and Others v. Dayal Singh and Others, Hon'ble Mr. Justice Dalip Kapur has held that money in the Bank can be considered to be an acceleration of pecuniary gain. As far as the life insurance policy is concerned, this is an amount which would have been received by the deceased, only if he had paid to remaining Installments on the policy, It was, thereforee, held that amount towards Life Insurance Policy could be considered a distinct pecuniary gain. In view of the above, a sum of Rs. 30,000.00 should be deducted from the aforesaid amount of Rs. 1,53,600.00 . The balance amount, thereforee, comes to Rs. 1,23,600/-. As regards bank saving amounting to Rs. 20,000.00 a deduction of 10 per cent is reasonable as the aforesaid amount is not a distinct pecuniary gain but it is an acceleration of pecuniary gain. As such, after deducting Rs. 2,000.00 from the aforesaid amount of Rs. 1,23,600.00 , the balance comes to Rs. 1,21,600.00 .'

(9) The learned Judge did not stop at the above figure and made last deduction at the rate of 15 percent for lump sum payment to the claimants. The ultimate award was assessed in the sum of Rs. 1,03,360 .00 . The question of liability of the Insurance Company, respondent No. 4 herein, was disposed of in the following manner :

'THE Insurance Policy has been produced and proved on record as Ex. R1/I. The liability of the Insurance Company is limited to the extent of Rs. 50,000.00 . As

regards the amount of Rs. 53,360.00 the liability of respondents 1 and 2 is joint and several.'

The Tribunal has proceeded on an erroneous basis in the assessment of compensation in the present case. There seems to be total non-application of mind in fixing the amount as contribution for dependency towards respondents-claimants. The deceased was a qualified Engineer and was 35 years of age. He was holding a high position of Chief Engineer in a reputed Company and it is accepted by the Tribunal that he was earning Rs. 2400.00 per month besides an allowance of Rs. 450.00 . The relevant parts of the judgment have already been reproduced earlier wherein it is indicated that the learned Judge has accepted that the deceased would be insured for Rs. 30,000.00 contributing to Provident Fund and would have saved at least Rs. 20,000.00 in his bank account. These findings are based on no evidence on record. They are merely originating from a mere guess work. therefore, no logic will sustain them and they have to be set aside. The adverse confusions cannot be drawn against the party and at best the income of the deceased can be accepted which has been indicated on the basis of evidence on record i.e. Rs. 2400.00 . The only deductions, which can be made from this amount, is the usual 1 /3rd for personal expenses and minimum amounts towards taxation and Provident Fund as required by statutory provisions. The further deduction from the awarded amount for lump sum payment is no longer sustainable in law. The following paragraph as reported in the judgment of Hardeo Kaur and Others v. Rajasthan State Road Transport Corporation and Another : [1992]2SCR272 is of great relevance and reads as under :

'7.We are of the view that deduction of 13th out of the assessed compensation on account of lump sum payment is not justified. The accident took place in July, 1977 and the litigation has come to an end, hopefully, today, 15 years thereafter. This Court in Motor owners' Insurance Co. Ltd. v. J.K. Modi, 1981 Acj 507 , held that the delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demanded years ago less than quarter of its value when it is received after such a long time. In Manjushri Radha v. B.L. Gupta 1977 Acj 134

this Court awarded compensation by multiplying the life expectancy without making any deductions. With the value of rupee dwindling due to high rate of inflation, there is no justification for making deduction due to lump sum payment. We, therefore, hold that the Courts below were not justified in making lump sum deduction in this case. '

(10) The learned Counsel for the respondents-claimants has vehemently contended that there was no basis or justification before the Tribunal to have reached the conclusion that the deceased was contributing particular amounts for Provident Fund, payment of premium of Insurance Policy as well as for savings in the Bank. There is considerable force in the said arguments. There is no doubt that some basic amount has to be contributed towards Provident Fund. It was, however, not necessary that the deceased would be paying premium for Life Insurance Policy, firstly, he may not have taken any policy and secondly this cannot be treated as a deduction from the amount fixed for dependency. The Tribunal has based its reasoning on conjectural basis merely on the ground that respondents-claimants have not given any positive proof or have not produced Income Tax Returns or filed the certificates of employment of previous employers. There was no reason to draw adverse inference on these grounds. The findings in this regard are, accordingly, set aside.

(11) The income of the deceased has been assessed at Rs. 2400.00 per month besides allowances of Rs. 450.00 per month. The deceased would be spending some amount on his personal expenses. The allowance of Rs. 450.00 has not been taken into account by the Tribunal on the ground that the deceased might have been required to spend such amount for official work. therefore, the total income of the deceased has been allowed at Rs. 2400.00 per month. The deceased was Chief Engineer and was duly qualified to hold that assignment. It is also not in dispute any longer that the Courts can consider the future prospect or advancement in life and career in terms of money to augment the multiplicand. In *General Manager, Kerala Road Transport Corporation v. Susamma Thomas and Others* : AIR 1994 SC1631 the Supreme Court accepted this proposition and doubled the income of the deceased who was 39 years of age at the time of his death. The multiplier of 2 was considered appropriate to the age of the deceased

The Supreme Court in Hardeo Kaur and Others (supra) which was an earlier judgment than the one cited above, adopted slightly different method to work out the dependency and multiplier. In that case the deceased was 36 years of age and was a Major in the Army. The income was assessed at Rs. 2200.00 per month and after allowing usual deduction for personal expenses the dependency was fixed at Rs. 1400.00 per month i.e. Rs. 16,800.00 per year. The multiplier of 24 was used, as considered appropriate to the age of the deceased and the ultimate award was made on that basis. This judgment did not take into account the future prospects of advancement in career but compensated the claimants by using a higher multiplier of 24 on the ground that the normal span of the deceased could not be less than 60 years. Similar view was expressed in Urmilla Pandey and Others v. Khalil Ahmadi and Others : [1994]3SCR1001 where the Supreme Court again reiterated that the life expectancy could not be less than 65 years and the deduction of 33 per cent on account of lump sum payment was not justified.

(12) The Tribunal in the present case has accepted the income of the deceased as Rs. 2400.00 plus Rs. 450.00 as allowance per month. The deduction of 1/3rd for personal expenses is again widely accepted as a valid deduction. Taking an overall view of the facts and circumstances of the present case, it can safely be held that the deceased was spending a sum of Rs. 1200.00 per month for his family which will take into account the compulsory deductions, such as, Income Tax, Provident Fund etc. which will come to Rs. 14,400.00 in the year. The dependency i.e. the annual amount which the deceased was spending for his family can be assessed at Rs. 14,400.00 in the facts and circumstances of the case. The multiplier of 25 on the basis of the age of the deceased, who was 35 years of age on the date of his death, would be appropriate in the present case to meet the ends of justice. Thus, the amount of compensation is assessed at Rs. 3,60,000.00 (Rs. 14,400.00 x 25) The award will be only marginally different if the assessment is based by using a lower multiplier on the basis of the judgment of Supreme Court in General Manager, Kerala State Road Transport Corporation (supra). The amount fixed for dependency has to be doubled on the basis of time bound consideration for promotion and revisions in the salary of the deceased in the years to come.

(13) The respondents-claimants have asked for enhancement of compensation as well as for fixing the entire liability on the Insurance Company, respondent No. 4 herein on the plea that the Tribunal has gravely erred in fixing the liability at Rs. 50,000.00 . The learned Counsel for the Insurance Company has contended that no relief can be granted to the respondents-claimants as they have only filed the Cross- Objections and no appeal has been filed to impugn the Award. The Cross-Objections are not maintainable against a co-respondent. Strong reliance is placed on the judgments as reported in Panna Lal v. State of Bombay and Others, : [1964]1SCR980 ; News India Assurance Co. Ltd v. Smt. Hemlata his was and Others Air 1983 All 115; Smt. Shazadi Begum v. Vinod Kumar and Another, : AIR 1978 MP20 and Hindustan General Insurance Society Ltd. now National Insurance Co. Ltd v. Nilima Mahanta and Others, (1989) Acc 341

(14) In the case of Panna Lal v. State of Bombay and Others (supra) the Supreme Court was of the opinion that ordinarily respondent cannot prefer objections against the co-respondent. The following passages from this judgment will be of relevance and lead as follows :

(16) The question whether a respondent could by way of cross-objection seek relief against another respondent under these provisions was first raised before the Court almost a century ago. Both the Calcutta and the Bombay High Courts held in a number of cases that ordinarily it was not open to a respondent to seek relief as against a co-respondent by way of objection, though in exceptional cases this could be done. (Vide Burroda Soonduree Dossee v. Nobo Gopal Mullick, 1864 Suth Wr 294; Maharaja Tarucknath Roy v. Tubootnissa Chowdhrair, 7 Suth Wr 39(1) Ganesh Pandurang v. Gangadhar Ramkrishna, 6 Bom Hcac 244 and Anwar Jan Bibi v. Azmut Ali, 15 Suth Wr 26. These decisions, it is proper to mention, were given under the Code of 1859 where Section 348 provided that 'Upon hearing of the appeal, the respondent may take any objection to the decision of the lower Court which he might have taken if he had preferred a separate appeal from such decision. ' After this section was replaced by Section 561 in the Code of 1877 and the Code of 1882 the question whether a respondent can file an objection against another respondent came up before the Courts several times and the decision remained the same.

(17) The Patna and the Allahabad High Courts also took the view that as a general rule the right of a respondent to urge cross objections should be limited to asking relief against the appellant only and it is only where the appeal opens up questions which cannot be disposed of properly except by opening up matters as between co-respondents that relief against respondents can also be sought by way of objections. The Madras High Court took a different view in *Timmayya v. Lakshmana* 7 Mad. 215 and held that the words of the section were wide enough to cover all objections to any part of the decree and it was open to a respondent to seek relief under this section even against another respondent and this view was reiterated by that Court even after the Code of 1908 made an important change in the provision by using the word 'cross-objection' in place of 'objection'. Ultimately however in 1950 a Full Bench of the Madras High Court in *Venkateshwarlu v Ramamma*, 2nd : AIR1950 Mad379 considered the question again and decided over-ruling all previous decisions that on a proper construction of the language. Order 41 Rule 22 confers only a restricted right on the respondent to prefer objection to the decree without filing a separate appeal; that such objection should, as a general rule, be primarily against the appellant, though in exceptional cases it may incidentally be also directed against the other respondents. The Lahore High Court which had earlier followed the former view of the Madras High Court also decided in *Jan Mohamed v. P.M. Razdon* Air 1944 Lah 433 to adopt the other view held by the High Courts of Allahabad, Bombay, Calcutta and Patna. The Nagpur High Court has also carbon copy. The mere alleged admission cannot be used against the respondents- claimants, particularly, in view of the fact that the vehicle was comprehensively insured and it was not an 'Act only' policy. The Tribunal has not dealt with any of the above aspects and has limited the liability of the Insurance Company to the extent of Rs. 50,000.00 without application of mind and without carefully going through the record. There is also force in the contention that adverse inference has to be drawn against the insurer when the endorsement attached to the policy are for a much later date than the actual date of the issuance of the policy itself. The reliance on the judgment of this Court as reported in *New India Assurance Co. Ltd v. Saloni Dargan and others* is correctly placed. The responsibility was on the owner and the insurer, respondent No. 4 herein and the said burden has not been discharged.

(20) For the aforesaid reasons, it is held that the liability of the Insurance Company, respondent No. 4 is unlimited and cannot be confined to Rs. 50,000.00 . The finding in this regard is reversed. The appeal, as a consequence, is dismissed. The cross-objections are allowed and the respondents-claimants are held entitled to compensation of Rs. 3,60,000.00 with interest at the rate of 15% per annum from the date of application till realisation. They shall also be entitled to costs, which are quantified at Rs. 5000.00 .

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