

Vimla Devi and ors. Vs. Chaman and ors.

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Court : Rajasthan

Decided On : Sep-18-1991

Reported in : 1992ACJ1048

Judge : D.L. Mehta, J.

Appeal No. : S.B. Civil Misc. Appeal No. 370 of 1990

Appellant : Vimla Devi and ors.

Respondent : Chaman and ors.

Advocate for Def. : H.M. Bhargava, Adv.

Advocate for Pet/Ap. : G.K. Bhartiya, Adv.

Disposition : Appeal allowed

Judgement :

D.L. Mehta, J.

1. This appeal is directed against the order/award dated 6.4.1990 passed by the Motor Accidents Claims Tribunal, Dausa, being aggrieved on the ground that the compensation awarded to the claimants-appellants is very less.

2. The brief facts of the case are that on 8.12.1983 respondent No. 1 was driving tanker URT 531. The tanker hit the camel-cart and thereafter it struck to the

coming truck No. RJR 5167. Deceased Shankar Singh, driver of the truck No. RJR 5167, sustained grievous injuries and succumbed to the injuries on the spot. Claimants-appellants are the wife, sons and daughter of deceased Shankar Singh. The Tribunal came to the conclusion that Shankar Singh deceased sustained injuries on account of rash and negligent driving of the tanker. Tribunal arrived at the conclusion that Shankar Singh was earning Rs. 1,000/- per month as salary at the time of sad demise. Tribunal also came to the conclusion that Shankar Singh might have spent Rs. 400/- per month towards his family members. Tribunal after considering the evidence awarded Rs. 1,30,000/- in all to Vimla Devi, wife, Rs. 7,200/- to Bahadur Singh and Rs. 8,400/- to Lal Singh and Rs. 9,600/- to Kumari Chitra. The Tribunal was also of the view that the claimants (Sic. deceased) might have lived up to the age of 65 years in the normal course. Thus, the multiplier was taken as 40 years and it was considered that the petitioner might have been maintained for only 40 years more. As far as the question of multiplier of the children is concerned, for Bahadur Singh the multiplier has been taken as 12 years and for Lal Singh the multiplier has been taken as 14 years and for Kumari Chitra multiplier has been taken as 16 years. It was considered by the learned Tribunal that the children might have received the dependency expenses only upto the age of 18 years and so the multiplier was 18 minus the existing age.

3. I have heard the rival contentions of both the parties. Mr. Bhartiya, the learned counsel for the appellant, cited before me the case of Teeja v. Ram Ratan 1986 ACJ 125 (Rajasthan). This court held that there should not be deduction on account of lump sum payment. The general trend of increasing prices and inflation was considered.

4. Mr. Bhartiya has also cited before me the case of Makbool Ahmed v. Bhura Lal 1986 ACJ 219 (Rajasthan). My brother Vyas, J., was considering the question of remarriage and held that the compensation should be paid only upto the date of remarriage and for the parents the multiplier was considered as 15 years. This case does not help Mr. Bhartiya in the facts and circumstances of the case in any way. However, I will like to observe that the Constitution of India guarantees equal treatment and particularly Article 15 of the Constitution read with preamble of the Constitution. Chapter IV of the Constitution directs the court and the Government

to provide equality of opportunity, equality of status and to give special facilities and concession to the weaker class of the society, namely, the women. The days when the widow remarriage was prohibited have gone and after coming into force of the Hindu Marriage Act and Hindu Succession Act, the doctrine of limited case also lost its ground. Widow has a right to remarry and it is in the interest of the society that remarriage of the young lady should be encouraged and the court should not be an impediment because of the old traditional approach, where the power vested in the man and the females were considered as the second class members. For this purpose, Section 14 of the Hindu Succession Act, 1956 also provides the right of absolute ownership to a woman and I am of the view that to say that on account of the remarriage or possibility of remarriage deduction of compensation will be against the spirit of the Constitution and will put a check on the remarriage system provided under various legislations enacted by the Parliament and the State Assembly. I am in disagreement on this point that there should be any impediment or restriction, directly or indirectly, compelling a woman not to remarry. On the contrary, an incentive should be given for remarriage for the preservation of better society. After remarriage generally a woman does not get the same status and benefits of decent life as she used to get earlier. Public feeling requires that there shall not be any deduction on account of possibility of remarriage.

5. As far as the income of the deceased is concerned, there is no dispute and ordinarily, it cannot be said that the driver earns less than Rs. 1,000/- per month. One must not forget the realities of life and the realities of the social system. No hard and fast rule can be laid down by the court that 73rd or 2/3rd or 72 should be earmarked for the family. Generally, it is said that 2/3rd amount should be considered as an amount spent by the deceased in the normal course for the maintenance of the family. The principle cannot be applied also in such cases like the present one, and I am in disagreement with the argument advanced that no amount exceeding 2/3rd can be earmarked for the dependent family. In the instant case, the deceased had a wife, two sons and one daughter. Thus, the family members were five. Two sons were of the age of school going and we expect that every parent will see that the old illiteracy is not forwarded to the young generation and at the cost of semi-starvation the parents see that their children should not be

illiterate. One should not also forget that in the present time, when the State is enacting legislation after legislation only for the betterment of the women sect and for the prevention of cruelty on women sect, Section 498A has been inserted to check dowry system which is prevalent in the society. Similarly, Section 125, Criminal Procedure Code, has been amended to the extent that every child has a right to get proper maintenance from his father. It is not for the wife to know from where the husband earns and maintains. It is for the husband to see for the maintenance of the family. In this perspective, I am not in agreement to accept the view that ordinarily 1/3rd of the income should be awarded as an amount of compensation to the members of the family of deceased husband, who is a bread-earner. One cannot forget also how the driver maintains his family when he is on the wheels and some social experience can be considered by taking judicial notice. For this reason, I am of the view that at least 75 per cent amount, which should be considered as dependency amount in the instant case, should be given. For this reason, I hold that the dependency amount should be raised from Rs. 400/- to Rs. 750/- per month.

6. As far as the span of life is concerned, 65 years of age has been considered and it is very reasonable in the present time. I will not like to disturb the finding on that point, however, it may go on higher side, in no case lower than that. For that purpose 40 years multiplier is maintained and compensation amount comes to Rs. 3,60,000/-. I will have to take note of the payment which is to be made instantaneously and on account of payment of lump sum amount some amount will have to be deducted from the amount of compensation.

7. Mr. Bhartiya cited before me the case of Rajasthan State Road Trans. Corpn. v. Pista Agrawal 1991 ACJ 890 (Rajasthan). In that case, this court has considered the question of deduction for lump sum payment and held that it was not a fit case for deduction in the lump sum payment. One must not be rigid in the matter of compensation cases and generally there are set principles. However, they will have to be applied looking to the facts and circumstances of each case.

8. In the case of Jyotsna Dey v. State of Assam 1987 ACJ 172 (SC), Hon'ble Supreme Court considered all the points and held that 20 per cent deduction made

on account of lump sum payment and uncertainties of life is reasonable. Thus, the Hon'ble Supreme Court also reduced 20 per cent amount out of the lump sum payment on account of uncertainties of life and immediate payment.

9. The consideration whether to reduce the amount of compensation on account of lump sum payment or not to reduce it, is not depending on one factor. Cumulative effect of all the factors will have to be taken into consideration. One must consider the uncertainty of life, which is one factor and goes in favour of reducing the amount on account of immediate payment or the lump sum payment. The other factor which goes in favour of the reduction is the income which if deposited in a bank can be given to the dependants of the deceased. Ordinarily, 10 per cent interest is payable and a person should not get only money in terms of payment less than the real money value which the dependants derived at the time of the accident and for this purpose, the consideration will be the inflation in the money market and increase in the cost index. If we consider that Rs. 350/- are to be paid today, the real value will be around Rs. 200/- or like that because of increase in the cost. Thus, what is the money value and what was the value at the relevant time also needs consideration. Taking into consideration the inflation and cost index, I am of the view that the deduction of 20 per cent should not be made. But, however, it cannot be said that there should be no deduction at all. In the instant case, for this very reason I reduce the amount of compensation by 15 per cent on account of lump sum payment. Thus, out of Rs. 3,60,000/-, 15 per cent should be reduced, i.e., Rs. 54,000/- should be reduced on account of lump sum payment and remaining amount of Rs. 3,06,000/- is liable to be paid by the respondents. This court has also held that on account of consortium, the amount awarded to the wife, i.e., Rs. 10,000/- and to each child Rs. 3,000/- should be maintained. Thus, there will be an increase also in the total amount by Rs. 22,000/- (Sic. Rs. 19,000/-) and so, the net amount which is payable to the claimants will be Rs. 3,28,000/- (Sic. Rs. 3,25,000/-).

10. As far as the system of apportionment is concerned, I do not agree with the Tribunal. In the system of apportionment, in the present time, one cannot think of marriage of a girl at the age of 18 and to pay to the girl the amount of a multiplier reducing the existing age out of the age of 18 years will be a crime to the society.

Generally, in the present time the marriageable age of the girl is considered to be above 21 years. Apart from that, the education and marriage expenses are also taken into consideration. Similarly, the sons are also entitled to get proper compensation so that they can get some education which is available in the country to the general public at large. I am of the view that the opportunity to the public and to the high-ups can be divided looking to the institutions in which they get the education. Educational institutions of Doon and educational institution of M.G.D., Jaipur, are not within the reach of the ordinary people. However, average educational institution, let it be government one, must be within the reach of the children who have lost their father. The amount awarded is very meagre and no consideration has been given about their education. To say that Bahadur Singh will get Rs. 7,200/-, Lal Singh will get Rs. 8,400/- and Kumari Chitra will get Rs. 9,600/- is no compensation in the eye of law. Even if we take the interest factor, each of them will get less than Rs. 100/-.

11. In the result, I accept the appeal and increase the amount of compensation from the amount awarded by the Tribunal to Rs. 3,28,000/- in all. The amount of Rs. 3,28,000/- shall be apportioned as under:

Kumari Chitra will get Rs. 75,000/- instead of Rs. 9,600/- awarded to her. Two sons, namely, Lal Singh and Bahadur Singh will get Rs. 60,000/- each and remaining amount of Rs. 1,33,000/- shall be paid to the wife. Appellants shall be entitled to get interest as awarded by the Tribunal on the amount of compensation from the date of application.

12. I will like that the amount paid to the claimants should be first adjusted towards the interest and after payment of interest, remaining amount should be adjusted towards the principal amount and this should be done in cases of all appellants proportionately. So, the amount paid by the insurance companies or the respondents will be adjusted as directed above firstly towards the interest and thereafter towards the principal.

13. I consider it proper also that the intermediaries should not be allowed to get the benefit of this amount and the society requires that the amount should be deposited with the bank or the Unit Trust of India, whichever is considered proper

by the Tribunal. The amount which is to be paid to Lal Singh, Bahadur Singh and Kumari Chitra must be deposited in toto with the Unit Trust of India. As far as the amount to be paid to Vimla Devi is concerned, the same should be considered for the purpose of deposit in two parts, i.e., 80 per cent in fixed deposit for exceeding five years and rest 20 per cent amount should be deposited in saving bank account. It is further directed that the parties will not be entitled to get loan against the fixed deposit receipts without the permission of the court. The fixed deposits should be renewed from time to time and payment shall be made to the minor claimants only after their attaining the age of majority.

14. The appeal is disposed of accordingly. No order as to costs.

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