

Narendra Kumar and anr. Vs. Ram Prasad Sharma and ors.

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Court : Rajasthan

Decided On : Nov-05-1992

Reported in : 1993ACJ751; 1993(1)WLC4

Judge : S.N. Bhargava, J.

Appeal No. : S.B. Civil Misc. Appeal Nos. 414 to 425 of 1991

Appellant : Narendra Kumar and anr.

Respondent : Ram Prasad Sharma and ors.

Advocate for Def. : K.N. Tiwari,; N.N. Tiwari and; Anil Pareek, Advs.

Advocate for Pet/Ap. : S.C. Srivastava and; R.M. Lodha, Advs.

Judgement :

S.N. Bhargava, J.

1. All these appeals arise out of an accident and involve common questions of law and, therefore, are being disposed of by this common judgment.

2. On 9.6.1987, Faizan Varis Farooqui, Asir Ali, Sajid, Nausad Ali, Vishnu Sharma and Natwar Lal were going from Ajmer to Jaipur in a taxi car No. RST 1018. The said taxi met with an accident at about 1 a.m. on 10.6.1987 at village Datari, near Dudu on Jaipur-Ajmer Road, National Highway No. 8, when truck No. DEL 3065

came from the opposite direction and hit the aforesaid car. The truck was being driven rashly and negligently while the car was going on its side and was not at fault. As a result of the accident, all the six persons named above as also the driver of the car sustained grievous injuries and died at the spot, except Vishnu Sharma who died after being brought to S.M.S. Hospital, Jaipur. Six claim petitions were filed by the legal representatives/dependants of the deceased persons before the Motor Accidents Claims Tribunal, Jaipur. The claim petitions were contested. The petitions were consolidated and the Tribunal, after recording evidence of the parties, found that the accident was caused on account of rash and negligent driving of truck No. DEL 3065 which was insured with Oriental Insurance Co. Ltd. and awarded damages in all the claim petitions. It is against this award of the Tribunal that the dependants of the deceased persons have filed six separate appeals which are S.B. Civil Misc. Appeal Nos. 419 to 424 of 1991 for enhancement of the compensation awarded by the Tribunal whereas Oriental Insurance Co. Ltd. along with the owner of the truck have filed joint appeal Nos. 414, 415, 416, 417, 418 and 425 of 1991 challenging the quantum of compensation and further praying that the claim petitions ought to have been dismissed and no liability should be imposed on the owner or the insurance company. Arguments have been heard.

3. Learned counsel for the claimants has raised a preliminary objection that joint appeal by the owner of the truck along with the insurance company is not maintainable and has placed reliance on a decision of this court in *Sushila v. Succlui Singh* 1989 ACJ 226 (Rajasthan), wherein N.M. Kasliwal, J., as he then was, after discussing the case-law at length, has held that the owner of the vehicle is not an aggrieved person inasmuch as the liability to pay compensation has been fixed on the insurance company and the insurance company can challenge the award only on the grounds available under Section 96(2) of the Motor Vehicles Act, 1939. He has agreed with the view taken by the Allahabad High Court in *United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta* 1985 ACJ 245 (Allahabad), *Kantilal and Bros. v. Ramarani Debi* 1980 ACJ 501 (Calcutta) and also *United India Fire and Genl. Ins. Co. Ltd. v. Lakshrni Shori Ganjoo* 1982 ACJ 470 (J&K;) and has respectfully disagreed with the view taken by the Karnataka High Court in *Vellayya Gounder v. N. Ramnathan* 1982 ACJ 251 (Karnataka).

4. Learned counsel for the claimants have submitted that this view has been taken again by this court in Bhawani Mal Mathur v. Bhagwati, S.B. Civil Misc. Appeal No. 186 of 1982; decided on 7.10.1986 and other unreported judgments.

5. On the other hand, learned counsel for the insurance company and the owner of the truck has submitted that this view of the learned single Judge of this court is not correct and needs a second thought in view of a recent Division Bench decision of the Madhya Pradesh High Court in Parmanand v. Manofuirdas 1990 ACJ 888 (MP) and the view of the Madras High Court in United India Fire and Genl. Ins. Co. Ltd. v. Ayisa 1979 ACJ 526 (Madras).

6. I have given my thoughtful consideration to the whole matter and have carefully gone through all the aforesaid authorities and in my opinion, the judgment of this court in the case of Sushila 1989 ACJ 226 (Rajasthan), is perfectly justified and I am in respectful agreement with the same as it is based on sound reasoning and in conformity with the view of Calcutta High Court, Allahabad High Court and J&K; High Court. The judgment of the Karnataka High Court has been distinguished in Sushila's case (supra). The judgment of the Madras High Court in the case of Ayisa 1979 ACJ 526 (Madras), is without any reason whatsoever. In the judgment of the M.P. High Court, the Division Bench has not agreed with the view of the learned single Judge of the M.P. High Court and has overruled its earlier judgment but they have not considered the judgment of this court in Sushila's case (supra). Having gone through that judgment carefully, I am unable to persuade myself to take a different view than that of N.M. Kasliwal, J. in Sushila's case (supra), more so when I find that in spite of so much education and awareness very few cases come out where claim petitions are filed and the claim petitions take number of years before they are disposed of and the benefit is given to the dependants of the deceased. It is a beneficial legislation and the intention of the legislature was that the dependants of the deceased should receive compensation at an early date. When the obligation of the vehicle's owner is fully vered by the insurance company and his liability is fully indemnified by the insurance company, the insurance company cannot take up any defence except on the grounds available under Section 96(2) of the Act and he is not to pay any part of the compensation, he cannot be said to be an aggrieved person and is not entitled to file an appeal.

Therefore, joint appeal by the owner of the vehicle and the insurance company is not maintainable.

7. In this view of the matter, S.B. Civil Misc. Appeal. Nos. 414, 415, 416, 417, 418 and 425 of 1991 filed by Narendra Kumar along with the insurance company jointly are hereby dismissed being not maintainable.

8. Learned counsel for the appellants in other remaining appeals have submitted that the Tribunal has considered average age of the dependants differently and there is no uniformity in it while deciding various claim petitions. Similarly, the Tribunal has also awarded interest at the rate of 12 per cent per annum only whereas these days the minimum rate of interest allowed by the various High Courts is 15 per cent per annum. It has further been submitted that in these days, the average age of a person is nearly 70 years. In this connection, reliance has been placed on Ramanand v. Lalita Sharma 1992 Vol. I Western Law Cases 250, wherein this court has taken the average age of an Indian to be at least 70 years. In Ayesha Mohammad Khan v. Jyoti M. Asawa 1991 ACJ 739 (Bombay), the average age was taken to be 65 year's and interest awarded was 15 per cent per annum from the date of application till realisation. In Mala Aggarwal v. Jagdish Kumar 1992 ACJ 123 (P&H;), Punjab and Haryana High Court had allowed interest at the rate of 15 per cent per annum. In Rukmani Devi v. Om Prakash 1991 ACJ 3 (SC), interest has been allowed at the rate of 15 per cent from the date of filing the petition till realisation.

9. Now, taking facts of S.B. Civil Misc. Appeal No. 419 of 1991. Faiyaz Varis Farooqui, aged 22 years, died. He was the only son of his parents. He was studying in M.E. Final (Engineering) and was also preparing for I.A.S. The Tribunal has found that he was earning Rs. 1,425/r per month by doing part-time work. The dependants were his father aged 48 years and mother aged 44 years. The Tribunal taking the age of the dependants as 60 years, has awarded the compensation by taking the multiple of 12 and has held that he was spending Rs. 950/- per month on his parents. The Tribunal has awarded Rs. 5,000/- on account of mental agony. The dependants of the deceased had claimed Rs. 10,10,800/- and the Tribunal has awarded only a sum of Rs. 1,41,800/- together with interest

at the rate of 12 per cent per annum.

10. I have gone through the evidence. The Tribunal itself in other cases has awarded Rs. 10,000/- for mental agony; in another case Rs. 7,000 and in one other case Rs. 9,000/-. There should be uniformity in decision and particularly when the matter relates to the same accident, Similarly, the Tribunal in one case has applied the multiple of 12 while in other cases it has applied the multiple of 15 and in different cases different multiples have been applied. Let us take the average age of the dependants to be 65 years. In the present case, since the mother of the deceased was of 44 years, therefore, multiple of 21 should have been applied. Therefore, in my opinion, the compensation awarded to the dependants should have been $\text{Rs. } 950/- \times 12 \times 21 = \text{Rs. } 2,39,400/-$ + Rs. 8,000/- for expenses and Rs. 10,000/- for mental agony: total Rs. 2,57,400/-. The appellants Varis Hasan and Aliaa Karam will be entitled to 15 per cent interest from the date of presentation of application till realisation, after deducting the amount of Rs. 15,000/- already paid under Section 92A.

11. Now, taking S.B. Civil Misc. Appeal No. 420 of 1991. Vishnu Sharma, aged 24 years, who was unmarried, died in the accident. The amount claimed by the dependants was Rs. 10,66,450/-. The dependants were his parents. The father of the deceased was aged 51 years and the mother 48 years. The deceased was doing the work of electric decoration and fitting and used to earn Rs. 1,500/- per month. He was seriously injured and admitted in S.M.S. Hospital, Jaipur, from where he was discharged in an unconscious condition on 29.8.1987 as nothing could be done and ultimately, he died on 5.11.1987. The claimants have submitted that they spent about Rs. 70,000/- on his treatment. The Tribunal has found that the income of the deceased was Rs. 900/ per month and he used to spend Rs. 600/- on his dependants. The Tribunal has applied the multiple of 15 and awarded Rs. 15,000/- for expenses on treatment and Rs. 10,000/- for mental agony and interest at the rate of 12 per cent per annum.

12. Having gone through the evidence adduced by the appellants and the facts and circumstances of the case, taking the income of the deceased as Rs. 1,200/- per month and taking that he must have spent Rs. 800/- p.m. on his dependants,

the amount of compensation should have been Rs. 800/- x 12 x 17 = Rs. 1,63,200/- + Rs. 50,000/- for expenses on his treatment and Rs. 20,000/- on account of mental agony particularly when the parents had to bear with their unconscious son for nearly five months. Thus the claimants are entitled to get compensation amounting to Rs. 1,63,200/- + Rs. 50,000/- + Rs. 20,000/- = Rs. 2,33,200/- with interest at the rate of 15 per cent per annum, after deducting the amount of Rs. 15,000/- if already paid under Section 92A.

13. Now, taking up S.B. Civil Misc. Appeal No. 421 of 1991. In this case, Asir Ali, aged 32 years, had died. The amount claimed by the claimants was Rs. 7,66,000. The dependants are his wife Yarennisa, aged 26 years, Asra and Mansura, daughters, aged 10 and 3 years respectively and Yaar Ali, son, aged 7 years. The Tribunal has found his income to be Rs. 1,200/- per month and he used to spend Rs. 600/- p.m. on his dependants. The Tribunal has used the multiple of 28 and awarded Rs. 5,000/- on account of mental agony to his wife, Rs. 2,000/- to the children each, thus, totalling to Rs. 2,12,600/-.

14. I have gone through the evidence. It has come on record that the deceased used to send at least Rs. 1,000/- p.m. for his family and sometimes he used to send more. Therefore, amount of compensation in this case should have been Rs. 1,000/- x 12 x 33 = Rs. 3,96,000/- + Rs. 22,000/- for mental agony = Rs. 4,18,000/- with interest at the rate of 15 per cent per annum, after deducting the amount of Rs. 15,000/- if already paid under Section 92-A of the Act.

15. Now, taking S.B. Civil Misc. Appeal No. 422 of 1991. Natwar Lai, aged 35 years, died and his dependants are his wife, children and his father. He was the taxi driver who used to earn Rs. 1,500/- p.m. The claimants claimed Rs. 9,55,000/- as compensation. The Tribunal has taken his income to be Rs. 1,000/- and he used to spend Rs. 665/- on the dependants and has applied the multiple of 23. It has awarded compensation by way of mental agony Rs. 13,000/- (Rs. 5,000/- to wife, Rs. 2,000/- each to children and father): total Rs. 1,96,540/-.

16. I have gone through the evidence and in the facts and circumstances of the case and taking the average age of the deceased to be 65 years, the multiple of 30 should have been applied. Income of a taxi driver will not be less than Rs.

1,200/- per month and even if he spent Rs. 400/- on himself, he must be spending Rs. 800/- on the dependants, therefore, the compensation should have been awarded to the claimants to the tune of Rs. 800/- x 12 x 30 = Rs. 2,88,000/- + Rs. 10,000/- for mental agony to wife + Rs. 3,000/- each to children and father: total Rs. 12,000/-. The claimants are thus entitled to get compensation of Rs. 3,10,000/- along with interest at the rate of 15 per cent from the date of presentation of application till realisation, after deducting the amount of Rs. 15,000/- if already paid under Section 92-A of the Act.

17. Taking S.B. Civil Misc. Appeal No. 423 of 1991. The deceased was 28 years old and he used to earn Rs. 1,000/- per month out of tent decoration. The claimants have claimed Rs. 8,64,000/-. The Tribunal has applied the multiple of 30. This case is similar to appeal No. 421 of 1991 wherein the average amount for the dependants has been taken to be Rs. 1,000/-. Taking the same amount, the compensation is awarded to the claimants to the tune of Rs. 1,000/- x 12 x 37 = Rs. 4,44,000/- + Rs. 10,000/- for mental agony to wife and Rs. 6,000/- each to daughter and parents = Rs. 18,000/-, i.e., Rs. 4,72,000/-, with interest at the rate of 15 per cent per annum after deducting the amount of Rs. 15,000/- if already paid under Section 92-A of the Act.

18. Now coming to S.B. Civil Misc. Appeal No. 424 of 1991. The deceased was aged 30 years and he used to work for tent decoration and the claimants had claimed Rs. 7,40,000/- as compensation, the dependants being his wife, aged 24 years, one son aged 4 years and daughter aged 2½ years. The Tribunal has taken the amount spent on dependants as Rs. 600/- p.m. and has applied the multiple of 28. It has awarded Rs. 5,000 to the wife on account of mental agony and Rs. 2,000/- each to the children on the same count.

19. Having gone through the evidence, I am of the view that in this case, the amount spent on dependants should be taken to be Rs. 1,000/- per month and the multiple of 35 should have been applied. Thus, the claimants are entitled to get compensation of Rs. 1,000/- x 12 x 35 = Rs. 4,20,000/- and Rs. 10,000/- on account of mental agony to wife and Rs. 2,000/- each to children, total Rs. 4,34,000/- with interest at the rate of 15 per cent per annum from the date of filing

petition till realisation, after excluding the amount of Rs. 15,000/- if already paid under Section 92-A of the Act.

20. In the result, S.B. Civil Misc. Appeal Nos. 414, 415, 416, 417, 418 and 425 of 1991 are dismissed being not maintainable whereas appeal Nos. 419,420,421,422,423 and 424 of 1991 are allowed as indicated above with costs including the publication charges in the newspaper.

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