

Tara Devi and ors. Vs. Om Prakash and ors.

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Court : Rajasthan

Decided On : Sep-20-1991

Reported in : 1(1992)ACC146

Judge : D.L. Mehta, J.

Appellant : Tara Devi and ors.

Respondent : Om Prakash and ors.

Advocate for Def. : Mr. Shrivastava, Mr. Srivastava

Advocate for Pet/Ap. : Mr. Bhartiya

Judgement :

ORDER

D.L. Mehta, J.

1. This appeal is directed against the award dated 3rd May, 1989, passed by the learned Presiding Officer of the Motor Accident Claims Tribunal, Jaipur, in case No. 222/1985.

2. Brief facts of the case are that on 23.3.1986, deceased Bhanwar Pal Singh, and his son Mahendra Pal Singh, were going towards Naharsinghji's Temple from their house on Hero Majestic Bearing No. RNE 330. When they reached near Transport Nagar, crossing suddenly respondent No. 1, came from Delhi By-pass driving his

truck No. DEG 4211, rashly and negligently and collided with the hero majestic. Due to this accident Mr. Bhanwar Pal Singh sustained serious injuries and died. Deceased Bhanwar Pal Singh, was working as Architectural Assistant in the P.W.D. and he was aged about 49 years. He was receiving salary of Rs. 2,095/- per month. The Tribunal, after considering the evidence of both the parties, arrived at the following conclusions:

(1) It is a case of contributory negligence and some negligence should be attributed to the deceased. It was found that the driver was driving the vehicle rashly and negligently. 25% negligence of the deceased and his son and 75% negligence of the driver of the truck was assumed. The Tribunal came to the conclusion that the deceased was earning at the time of this death a sum of Rs. 2,161.75 paise. The Tribunal also come to the conclusion that the age of the deceased should be around 50 years at the time of accident. The age of retirement is 58 years. The Tribunal found that some amount should be reduced on account of dependency for the following reasons.

(1) That the son of the deceased was employed by the Government, as a solatium of the past services rendered by the deceased and the son who is appointed is drawing Rs. 900/- per month.

(2) The second reason for the reduction is that the family pension is granted and the members of the family in getting Rs. 400/- as pension.

3. Mr. Bhartiya, learned Counsel for the appellant submits that Tarabai, wife of the deceased has stated on oath that the age of the deceased was 47 years. He further submits that the Tribunal has committed an error in considering the statement of Kasilash, In the statement, the age of the deceased has been shown as about 49 to 50 years. Mr. Bhartiya submits that the best document is the post-mortem report, in which the age has been recorded as 47 years. Thus, the statement of Mst. Tara, wife of the deceased should be the basis of the age of the deceased that the age of the deceased was 47 years and not 50 years and this Court should arrive at a conclusion that the age of the deceased was 47 years and not 50 years at the time of accident

4. On the other hand, Mr. Shrivastava, learned Counsel for the respondents submits that in the statement of Kailash, P.W. 3, is the witness of the claimants and he has stated that the age of the deceased was about 50 years at the time of accident so this age should be taken as foundation for the determination of the age. He further submits that the statement of Mst. Tara, have not been corroborated by any other oral evidence. He further submits that the necessary documents relating to the age of the deceased has not been produced by the claimants. Mr. Shrivastava further submits that the age of the deceased should be considered as 50 years and not 47 years.

5. I have heard the rival contentions made by the learned Counsel for the parties. It is true, that Smt. Tara Devi, has stated that the age of deceased was 47 years and the same has been recorded in the post-mortem report. It is also true that Kailash Chandra, witness produced by the claimants has stated that the age of the deceased was under 50 years and he has stated on the estimation made by him. I do not agree with the submissions made by the learned Counsel for the parties about the age. One important factor is that the age of the deceased has been shown as 49 years in the claim petition itself. Learned Counsel for the respondents submitted that they are having no knowledge about the age of the deceased. Thus, after taking into consideration the conspicuous picture of the case and the documents including the post-mortem report, I will take the statement made in the claim petition as correct for the purpose of estimation and I conclude that the age of the deceased should be considered as 49 years at the time of accident for the purpose of determination of compensation. Mr. Bhartiya, learned Counsel for the appellants submits that the multiplier of 8 years has been taken into consideration considering that the deceased might have served the government upto the age of 58 years only and 58 years age is the age of superannuation. He further submits that ordinarily, life span is generally considered by the court as 65 to 70 years. He further submits that even after retirement, the deceased being a technical man was in position to earn his livelihood and would have maintained his family. Mr. Srivastava, learned Counsel for the respondents submits that the appellants cannot get amount beyond the age of 58 years as he would have attained the age of superannuation.

6. I have taken into consideration the submissions made by the learned Counsel for both the parties. It is true, that after the retirement the income may not be the same as it was during the period of employment and the income pay reduce even then the deceased might have earned his livelihood being an architect. Even out of 7 years the average remaining period of the life i.e. a period between 56 to 65 years. We can assume that the deceased might have at least spent amount equal to 2 years multipliers i.e. $2/7$ may be considered for the multiplier for the remaining part of the life and this will come to 2 years. After taking into consideration all these facts, I will like to increase the multiplier of the post of superannuating Period by 2 years. Thus, the multiplier will be one year on account of taking the life of 49 years instead 50 years and 2 years of the multiplier of the past retirement period. Thus the total multiplier will be $8+2+1= 11$ years instead of 8 years awarded by the Tribunal. I have also taken into consideration the fact that Virendra Pal Singh had to join the service at the tender age of 18 years.

7. The employment given of a very petty nature cannot be a consideration in the reduction of the amount. The same will also apply to post retirement benefits.

8. As far as the dependency is concerned, there is no justification to award Rs. 200/- per month. It is the case of the claimants as well as the finding that the deceased was earning Rs. 2,175/- per month as salary. There is nothing on record to suggest out of the total income per month. Ordinarily, when the person is reaching the age of retirement or has crossed the life of 40 years, he devotes more towards his family members. He has to spend more on his family because the children will be young and school going and college going. He will have to perform the marriages. Thus, he will have to undergo the family liability. In fact, the saving is made during the early span of life and out of the saving one has spend more on the family. In the normal course, if we divide amount by 5 on the equal amount even then the petitioner might have spent at the most Rs. 430/- on him. Thus there remains Rs. 1,745/- for the maintenance of the family. One can take judicial notice that one has to belt on his belly. May be partly starving and will have to feed the children. In this way, the amount may come to Rs. 1,745/- per month. After taking the conspicuous picture of all the other benefits and other allied matters, I consider that Rs. 1,500/- should be the minimum amount, which can be

arrived at for the purpose of dependency of the members of the family. Thus, the appellants are entitled to get the compensation for all years and monthly compensation is Rs. 1,500/- and compensation shall be Rs. 18,000/- per year and for the 11 years, the amount shall be Rs. 1,98,000/-.

9. The court has considered the point of contributory negligence and I agree with the finding of the deduction. Thus, after deducting 25% out of Rs. 1,98,000/- the appellants shall be entitled to get Rs. 1,49,500/- in addition to this amount, the appellants are entitled to get the amount of consortium. The amount of Rs. 2,000/- is fixed for the children and Rs. 5,000/- for the wife is not a sufficient amount. The amount on account of consortium is increased from Rs. 5,000/- to Rs. 10,000/- in favour of the wife and Rs. 3,000/- instead of Rs. 2,000/- is in favour of each child. Thus, the total amount will be Rs. 1,49,500/- plus Rs. 22,000/- i.e. Rs. 1,71,500/- in all. The appellants will be entitled to get interest as awarded by the Tribunal, at the rate of 12% per annum. Out of this Rs. 71,500/- shall be paid to wife Smt. Tara Devi and shall be entitled for interest on this amount as awarded by the Tribunal. Similarly, Kumari Beena, will get Rs. 30,000/- plus interest at the rate awarded by the Tribunal. Kumari Shashi, will also get Rs. 30,000/- plus interest at the rate as awarded by the Tribunal. Out of the remaining amount of Rs. 40,000/- Mahendra Pal Singh and Virendra Pal Singh, will get Rs. 20,000/- each and the interest shall also be paid on the aforesaid amount at the rate as awarded by the Tribunal. The claimants shall also be entitled to get interest from the date of filing of the application i.e. 3.5.1986. The amount if any paid by the respondents shall first be apportioned.

10. The question of apportionment of the amount, which is being deposited by the Insurance Company, is a question, which needs consideration. One must understand that the liability to pay the compensation accrued from the date of accident and it is the duty of the company to find out the income of the deceased and the names of the dependants and should arrive at a conclusion of compensation which may be just and proper in the eyes of the insurance company and they should not be compelled to go to the Tribunal and file an application for the grant of compensation. The Insurance Company must offer the compensation immediately. In case, there is any dispute about the claimants, the insurance

company should deposit the amount in court and should make a prayer to the court that this may be treated as inter-pleader suit and the amount and interest should be paid to the claimant who are entitled under the law by the court. If this system is adopted, it will absolve the liability of the Insurance Company from the payment of interest.

11. It will not be out of place here to mention that apart from that the amount is deposited after the award after a pretty long time, they will have to declare whether they are depositing the amount which is the amount against the principal amount or against the interest or in the case of non-declaration, the claimants has a right to appropriate interest towards which has accrued upto the date of deposit of amount and thereafter the remaining amount is adjusted to wards the principal amount. It can be said that after the award, the position may change. However, upto the date of award, the claimants have a right to adjust the amount first towards the interest. Mr. Shrivastava has cited before me the case of National Insurance Co. v. Smt. Manjula D.B. Civil Appeal No. 90/1987 decided on 20.8.1991. In which Their Lordships have held as under:

We are of the view that a deposit was made towards the damages. Thus there was a negotiation to deposit the amount towards the principal amount of the damages and not towards the interest and the depositor has a right to declare his option and the claim can only be adjusted against the interest if no declaration has been made.

12. In the instant case, I do not find that any declare action has been made so naturally, there is a right in favour of the claimants to adjust the amount towards the interest.

13. As far as the enhancement of the award is concerned, the respondents will be liable to pay interest only from the date of enhancement on the enhanced part of the award till the date of payment. The amount so deposited earlier, shall be adjusted first towards the interest and the remaining amount shall be adjusted towards the principal amount. Towards the remaining principal amount if any, the respondents will be liable to make the payment till the date of final payment

14. The amount of interest so accrued may be paid to Sushri Beena and Smt. Taradevi, wife of deceased. Rest of the amount shall be deposited in the fix deposit account and the amount of interest shall also be paid to the sons. However, the principal amount shall be deposited in the fix deposit if not deposited so far for a period of 5 years. The claimant Beena, will be entitled to withdraw the amount at the time of her marriage with the permission of the Tribunal.

15. The appeal is disposed-of accordingly.

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