

Jayantilal and anr. Vs. Driver Ranbir Singh and ors.

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Court : Rajasthan

Decided On : Sep-24-2001

Reported in : 2002(2)WLN500

Judge : Prakash Tatia, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163A and 173

Appeal No. : S.B. Civil Misc. Appeal No. 181 of 1986

Appellant : Jayantilal and anr.

Respondent : Driver Ranbir Singh and ors.

Advocate for Def. : G. Vaishnav,; Sanjeev Johri and; R.S. Chouhan, Advs.

Advocate for Pet/Ap. : Harstikhlal M. Lathia,; Suresh Khumbliat and; Pankaj Boh

Disposition : Appeal partly allowed

Judgement :

Tatia, J.

1. This is an appeal against the award dated 19.2.1986 passed by the Motor Accidents Claims Tribunal, Udaipur in Claim Petition No. 198/1981 by which the claim petition of the legal representatives of Deepak Jayantilal Raja, Shri Jayanti Lal and Smt. Vanita, who are father and mother of the deceased-Deepak, was

decided by the Tribunal awarding Rs. 56,000/- in favour of the claimant-appellants and against non-applicant Nos. 1, 2 & 3 and rejected the claim against non-applicant Nos. 4, 5 & 6, along with interest @ 10% per annum from the date of filing of the claim petition on the condition that in case the amount will be deposited within three months before the Tribunal to be paid to the claimants, otherwise the claimants will be entitled for interest @ 12% per annum. The costs of the litigation was awarded Rs. 300/-.

2. Brief facts of the case are that the deceased-Deepak Jayantilal along with deceased-Rhanwar Lal were travelling in taxi-car No. RST 6171 from Ahmedabad to Udaipur on 2.6.1981. At about 5.00 to 6.00 a.m., while the car was going on Udaipur National Highway No. 8, a oil-tanker No. 7135 came from opposite side and hit the taxi-car and the passengers travelling in the taxi-car were injured including Deepak and Bhanwar Lal who died. Before death, Deepak was seriously injured and he was taken to the Udaipur Hospital and died on 19.6.1981. Replies were filed by the non-applicants and there was counter allegation of rash and negligent driving against each other by the driver of the tanker and driver of the taxi-car. The Tribunal framed issue No. 1 with respect to the whether on 2.6.1981 Deepak Jayantilal died due to the rash and negligent driving of vehicle No. 7135 by Ranvir Singh and whether the claimants are entitled for Rs. 2,00,000/-. In another claim petition No. 1/1982 which was filed by Sujanmal and others due to the death of Bhanwar Lal, the Tribunal framed five issues. The learned Tribunal in both the claim petitions by common order dated 19.2.1986 awarded different amounts but this appeal is against only claim petition No. 19811981.

3. The Tribunal in claim petition No. 198181 decided issue No. 1 in favour of the claimants and also decided issue Nos. 1, 2, 3 & 4 of the claim petition No. 1182 in favour of the claimants and against non-applicant Nos. 1, 2, 3 & 4 holding that there was a rash and negligent driving of the driver of the tanker causing the accident.

4. The Tribunal, while considering the quantum to be awarded to the claimants, held that the deceased might have earned Rs. 500/- per month and he would have incurred Rs. 250/- for himself and, therefore, the claimants deprived of Rs. 250/-

per month and, after considering the age of the claimants, applied multiplier of 12 and awarded Rs. 36,000/- on this count. The Tribunal also awarded Rs. 5,000/- for pains and physical sufferings of the deceased, Rs. 3,000/- for medicines and extra diets, Rs. 10,000/- for mental shock and sufferings to the parents and Rs. 2,000/- was awarded as funeral expenses and, therefore, in total Rs. 56,000/-.

5. It is relevant to mention here that in the claim petition, the claimants stated that the deceased-Deepak was getting Rs. 375/- per month as he was in service of one Eye Surgeon Dr. Duru who was having his private hospital, for the applicant-appellant and he may have copies of the statements but Shri J.S. Bhatt was not having record with him. The Tribunal, thereafter, tried to reconstitute the record and notices were sent but no efforts were made by the parties who were fully aware of the order of this Court dated 2.7.1996. The Tribunal sent back the record along with letter dated 25.11.1999. In these circumstances, the matter was placed before this Court on 15.3.2001 and on that day the case was adjourned. Again it was listed on 17.5.2001 and, thereafter, the matter was listed before this Court on 6.7.2001. The above facts were taken note of by this Court and this Court made efforts to reconstitute the record by the help of the counsel for the parties and ultimately copies of the statements were obtained from the counsel for the parties on 6.8.2001 and thereafter the matter was heard.

6. During pendency of this appeal, the claimants submitted an application requesting to permit the claimants to amend and enhance the original claim amount of Rs. 2,00,000/- to Rs. 4,00,000/- because of subsequent change in law during pendency of the appeal. This application was filed on 14.5.2001. No reply has been filed by any of the respondents to the above amendment application. In this application, it is stated that by amendment Section 163-A was added in the [Motor Vehicles Act, 1988](#) on 14.11.1994 whereby Rs. 15,000/- per annum has been fixed as notional income or deceased-Deepak was also studying earlier but he left the studies. According to the claimants, the deceased would have earned Rs. 500/- per month. He was of the age of 19 years only at the time of death. In claim petition, the total claim assessed by the claimant was Rs. 4,00,000/-, but the reasons best known to them, they confined their claim to Rs. 2,00,000/- only.

7. The present appeal was filed against the impugned award dated 19.2.1986. The appeal was filed on 21.5.1986 and since then the appeal is pending for such a long period and the argument were heard by the learned Single Judge of this Court on 16.5.1996. On 2.7.1996, the learned Single Judge of this Court directed to reconstitute the record of the Tribunal as it was found that part of the record of the Tribunal was weeded out. The available record was sent to the Motor Accidents Claims Tribunal on 17.7.1996. It is found from the record of the Tribunal that the record was received by the Tribunal on 25.7.1996. The Tribunal by order dated 31.7.1996 passed the order to issue notices to the counsel for the parties with a direction that whatever record available with them may be produced before the Tribunal on 8.8.1996 so that the record may be reconstituted. Even after service, none of the counsel appeared on 8.8.1996, therefore, again notices were issued by order dated 8.8.1996. On 23.8.1996 Shri J.S. Bhatt, Advocate appeared and stated that the Advocate was coming from Rajkot deemed income for those who are in the category of non-earning persons. It is also stated that if the amount would have been paid to the claimants within the stipulated period it would have increased eight times within a span of 20 years and further submitted that Section 163-A, Second Schedule, has been made applicable retrospectively and it is also stated that earning potentialities of the deceased also were worth consideration and, therefore, the amount of the award must exceed even Rs. 4,00,000/-- Therefore, the claimants claimed that they may be permitted to amend the relief. The learned counsel for the appellants also relied upon various judgments in support of his contention.

8. Since the prayer of the claimants is on the ground of change in law and the decision given by the Hon'ble Apex Court and this Court, therefore, on the grounds of which enhancement of claim is sought involve no investigation of new fact and hence, instead of permitting amendment of the claim petition, I deem it proper that this subsequent event can be taken note of by this Court while deciding the appeal. Therefore, it is held that the above contention of the learned counsel for the appellants will be considered at the time of arguments while deciding the appeal itself and the subsequent even will be taken note of with respect to the entitlement of the enhanced claim of the claimants.

9. The learned counsel for the appellants vehemently submitted that the amount awarded by the Tribunal is too low and also submitted that the Tribunal has committed serious illegality in not considering the future prospects of earning of the deceased. According to the grounds taken in the appeal, the claimants claimed that if the future prospects of loss of income is considered then Rs. 3,000/- per month should have been taken, as the value of the money has decreased.

10. I perused the record and evidence, copies of which were taken on record by order of this Court dated 6.8.2001.

11. The father of the deceased-Jayantilal was examined as AW-I and he stated that Deepak (deceased) was in service in the hospital of Dr. Hansmukh Duru in the year 1979 and was getting Rs. 375/- per month. He left the service to appear in the examination of Class-Xth and, thereafter, he again joined the service in the firm Sahajanand Mukhwas Center, Rajkot dealing in the pharmaceutical business and he was getting Rs. 200/- per month for two hours job and Rs. 400/- for full-time job. Even at the time of examination he was getting Rs. 175/- per month as part-time employee. It is further stated by the father of the deceased that he himself is employed in the Roadways Department of the Government and his son was entitled for the service in the Roadways Department and if he would have joined so, he would have got Rs. 750/-per month but the deceased was interested in the business of travelling agency. The father of the deceased was willing to assist the deceased son for doing this business of travelling agency and, from the above business, he could have got Rs. 4,000/per month to Rs. 5,000/- per month after excluding other expenses for the business. The deceased-Deepak, while travelling to explore business prospects, met with above accident. The claimant Jayantilal stated that the claim of the claimants could have been Rs. 4,00,000/- but they are claiming only Rs. 2,00,000/-. The bills of the medicines remained in the hospital. In cross- examination, AW-1 Jayantilal admitted that he has not produced the certificate of employment from the firm Shahjanand Mukhwas Center. The other witness was AW-2 Narayan Das who proved the fact of accident and has not stated anything for the income of the deceased, whereas Dr. G.L. Dad was examined as AW-3, who stated that deceased-Deepak died on 21.6.3981 in the ward where the treatment was going on and proved the post-mortem report. PW- 4

is the witness Harish Chandra who was Assistant Manager of the Firm Shahjanand Mukhwas. He stated that Deepak Jayantilal was getting Rs. 400/- per month and when Deepak was working as, part- time, he would get Rs. 200/- per month. He further stated that Deepak went from Ahmedabad to Udaipur to find out possibilities of business of travelling agency, From this business, the deceased would have got Rs. 2,000/- to Rs. 2,500/- per month. The witnesses Mangal Singh appeared as NAW-1 and Gopedra as NAW-2 who was employee of the Roadways Department. The learned Tribunal, after considering the evidence, held that the deceased was getting Rs. 500/- per month but it is clear from the award itself that the Tribunal has not considered the future prospects of earning of the deceased.

12. According to the learned counsel for the appellants, in view of the insertion of Section 163-A and the Second Schedule under the above Section 163-A, the claimants are entitled more than what has been awarded by the Tribunal.

13. In the present matter, when there was a specific plea of the claimants themselves that the deceased was getting Rs. 375/- per month and they have based their claim stating therein that the deceased might have got the job in the Roadways Department for which the deceased was entitled as his father was in the employment of the Roadways Department and, in view of the fact that the claimants based their claim on the basis of the fact that the deceased was exploring the possibility of business of travelling agent, then this is not a case of 'non-earning person'.

14. The Tribunal also assessed the income of the deceased as at the time of the death of the deceased as Rs. 500/- per month as claimed by the claimants themselves, then this finding is based upon the plea of the claimants themselves and no fault can be found in the above finding by the claimants-appellants, but at the same time, it is relevant to mention here that the claimants themselves very categorically stated, in the claim petition as well as on oath that in the year 1979, the deceased was getting Rs. 375/- per month and, at the time of accident, the deceased would have earn Rs. 500/- per month. In para No. 5 of the claim petition, another stand was taken by the claimants that though the deceased was getting Rs. 375/- per month in the year 1979 and he left the studies and in case he would

have joined the service of the State Transport Department, he would have got Rs. 1,500/- to Rs. 2,000/- per month at the time of retirement In second sub-para of para 11 of the claim petition, the claimants again stated that the claimants were entitled for Rs. 1,20,000/- on the basis of the annual loss of income of Rs. 6,000/- (on the basis of Rs. 500/- per month) and thereafter on the ground of future prospects, average income of the deceased, the claimants claimed Rs. 1,000/- per month and by applying multiplier of 20, the claim of the claimants was of Rs. 2,40,000/-. Therefore, on the basis of the income of Rs. 1,20,000/- and on the basis of future prospects Rs. 2,40,000/-, the total Rs: 3,60,000/- was the claim of the claimants on this count of loss of income in the claim petition.

15. As stated earlier, the claimants after taking all sorts of different stands for the claim on the basis of last drawn salary of the deceased or the deceased would have got Rs. 500/- per month at the time of accident or in the business or if the deceased would have joined service of State Transport Department and @on the basis of future prospects, in total claimed Rs. 4,00,000/- but confined their claim to Rs. 2,00,000/- only both in claim petition as well as in their statements before the Tribunal. Now the claimants are requesting that their original claim be permitted to be raised from Rs. 2,00,000/- to Rs. 4,00,000/-. There appears to be no justification for seeking permission to increase original claim petition which the claimants themselves have relinquished in their original claim petition, that too, about 20 years ago. When the Tribunal has determined the monthly income of the deceased as Rs. 500/- per month though admittedly the deceased was lastly getting salary of Rs. 375/- per month only then I do not find any reason to hold differently.

16. Various judgment cited by the learned counsel for the counsel are with respect to the proposition that the value of the money has come down and, according to the learned counsel for the appellants this fact can be taken note judicially and the purchasing power of the rupees has come down has been taken note in the various judgments. It is no doubt that the Court can presume that the money is not having the same value which was available in the year 1979 or 1981 and the prices have gone up abnormally high in last 20 years. That may be a ground for raising adequate compensation to the claimants as the money which was due to

the claimants in the year 1981 is being paid, if proved, in the year 2001 but increase in the original claim has no relevance due to the rise in the price of the goods or due to the going down the value of the rupee. How above facts affect the relief to the claimants, will be considered at the time of grant of relief to the claimants.

17. It is true that the Tribunal committed illegality in not taking note of the future prospects of the earning of the deceased. The learned counsel for the appellants relied upon various judgments including the judgment of the Hon'ble Apex Court delivered in : General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susannma Thomas and Ors., AIR 1994 SC 1631 wherein Hon'ble the Apex Court after taking into consideration the future prospects held the average income of Rs. 2,000/- instead of Rs. 1,032/- which the deceased was getting at the time of accident and deducted 1/3rd of the above income which would have been incurred by the person affected by the accident for himself.

18. Here in this case, the Tribunal has not considered the above aspect. The contentions of the learned counsel for the appellants, with respects to their claim on the basis of getting job in the roadways department by the deceased or could have started his their business of travelling agency, they are nothing but propositions on the basis of assumption and, in substance, they are nothing but expectations of the earnings in future of the deceased. BY saying that the deceased might have got the income of Rs. 500/- at the time of death though he was getting Rs. 375/- per month or he would have joined the service or he would have started the business, for which, there appears to be only vacillating assumption of the claimants or it is due to the result of fluctuating mind of the deceased. Therefore, those considerations are not safe to determine the quantum of loss suffered by the loss of income. When in fact the deceased was getting Rs. 375/- per month and when it is stated that if the deceased would have continued in the service of the Ayurvedic Firm of Dr. Duru, the deceased would have got Rs. 500/- per month at the time of accident, as stated by AW-1 Jayantilal himself, then in view of the above admission, there appears to be no illegality in holding income of Rs. 500/- per month of the deceased. Since the Tribunal has not considered the future prospects of the income of the deceased after the accident which is required

to be determined and in view of the decision of the Hon'ble Apex Court in the case of Mrs. Susamma Thomas (supra), the same criteria can be applied here also and, after taking into consideration the future prospects of earning of the deceased, Rs. 1,000/- per month can be held to be the average income of the deceased for the purpose of determination of the compensation. The Tribunal has deducted 50% of the income of the deceased on account of the expenses to be borne by the deceased for himself which appears to be on higher side and it should have been 1/3rd of the income. Rs. 1,000/- being assessed monthly income of the deceased and after deducting Rs. 350/- which comes to just higher than 1/3rd of the income deserves to be deducted for the expenses of the deceased, the claimants are entitled for Rs. 650/- per month. The annual loss of income thus comes to Rs. 7,800/-. The Tribunal applied the multiplier of 12 only on the ground that the claimants are father and mother. Claimant No. 1 was having age of 45 years and claimant No. 2 was having age of 35 years. After the accident which took place in the year 1981, now 20 years have already passed and both the claimants are surviving and not reported to be dead, therefore, in the peculiar facts of this case, when the claimants survived more than 20 years of the accident, it hardly requires any further proof of their longevity, hence, multiplier of 18 will be appropriate to be applied, the amount comes to Rs. 1,40,400/-. Therefore, it is held that the claimants are entitled for total amount of Rs. 1,40,400/- on account of loss of income due to unfortunate death of their son instead of Rs. 36,000/- only. I do not find any illegality in awarding Rs. 3,000/- by the Tribunal for extra diets and medicines. The award of amount of Rs. 10,000/- only to both the claimants on account suffering to the claimants due to death of their young son is on a very lower side and it deserves to be increased to Rs. 25,000/- to both and there is no illegality in awarding compensation on account of funeral expenses as they are not under challenged. The net amount for which the claimants are entitled are; Rs. 1,40,400/- on account of loss of income to the claimants, Rs. 5,000/- for mental and physical suffering of the deceased (which is not under challenged by any party), Rs. 3,000/- for expenses on account of medicines and extra diets etc., Rs. 25,000/- on account of mental and physical suffering of the claimants due to the death of their son and Rs. 2,000/- for funeral expenses (which is not in dispute), and thus the total amount of Rs. 1,75,400/-.

19. The learned counsel for the appellants vehemently submitted that the claimants were awarded Rs. 56,000/- by award dated 19.2.1986. The claimants are entitled for the amount which is just and appropriate looking to the value of the rupee today and, therefore, increase of Rs. 1,40,400/- cannot be actual amount because this amount was payable to the claimant in the year 1981 and is now being paid after 20 years when the value of money has come down and purchasing power of this amount is also went down due to the rise of the prices of the goods. Therefore, according to the learned counsel for the appellants, the appellants deserves to be compensated suitably by increasing this amount. After thoughtful consideration and in view of the various judgments cited by the learned counsel for the appellants, which need not be referred in view of the fact that the above facts are taken note of by this Court, it requires to be considered whether the appellants will get the adequate relief or the appellants deserve more than what has been increased.

20. The interest over the claim amount is awarded to compensate the claimants because of the deprivation of their legitimate claim for a period from the date of their entitlement till the date of actual payments to the claimants and the ordinary course of compensation is payment of interest over the above claim amount which was payable to the claimants immediately after the accident or immediately on filing the claim petition, therefore, there is delay then claimants are paid interest over it for a long period of 20 years which will make the adequate compensation to the claimants due to the delay in payment. But in addition to above, I deem it proper to award notional amount due to the increase in price of the goods in last 20 years and looking to the peculiar facts of this case, which is that the claimants filed the claim petition in their young age of only 45 years and 35 years, the amount is being paid when the claimants are at the age of 65 years and 55 years, a sum of Rs. 25,000/- is, therefore, awarded in addition to award keeping into account the above facts. Therefore, it is held that the claimants are entitled for total Rs. 2,00,400/- (Rs. 1,75,400 + Rs. 25,000). The claimants are also entitled for the interest @ 12% per annum from the date of filing of the claim petition over the above increased amount of Rs. 1,40,400 - Rs. 36,000 -1,04,400/- and over Rs. 15,000/- only and the claimants shall not be entitled for interest over Rs. 25,000/- awarded as special damages due to the reasons mentioned above. The claimants

shall be entitled to the interest @ 12% per annum upto December, 2000 and, thereafter, in view of the subsequent judgment of the Hon'ble Apex Court, from January, 2001 at the rate of 9% per annum. The claimants shall also be entitled for costs of this appeal.

21. The Insurance Company preferred the cross-objection praying that the liability of the non-applicant respondent-New India Assurance Company Limited is limited liability upto the extent of Rs. 50,000/- only, therefore, whatever amount is granted to the appellants, the claimants are entitled only upto the extent of Rs. 50,000/- from the respondent-New India Assurance Company Limited.

22. The learned counsel for the appellants submitted that this was a pure question of fact. No specific plea was raised by the respondent-insurance company and mere vague plea cannot be entertained. No request for framing an issue was made by the respondent-Insurance Company and there is no evidence of the Insurance Company that they are liable only for limited amount. According to the learned counsel for the appellants the fact of insurance is admitted and proved fact. The defence available to the Insurance Company is required to be pleaded and proved by the Insurance Company and, in case the Insurance Company would have produced any witnesses in support of their defence of limited liability they had a right to rebut it and, in absence of issue, there is every likelihood of serious prejudice to the appellants and the appellants are deprived of producing the witnesses in rebuttal to the defence of the Insurance Company and also submitted that the plea of the respondent-Insurance Company in appeal deserves to be rejected as this was not even argued before the Tribunal.

23. A bare perusal of reply filed by the New India Assurance Company before the Tribunal, it is clear that in special pleas, the New India Assurance Company only mentioned that in case the claimants are found entitled and the Insurance Company is found liable then their liability is limited Under Section 95 & 96 of the Motor Vehicles Act but no issue was framed before the Tribunal and there was no request of the Insurance Company to frame the issue on this point. Not only this, no evidence was produced by the Insurance Company nor the Insurance Company proved the insurance policy. Therefore, it cannot be said that the

Insurance Company has not charged any extra premium for the entire liability. It was the duty of the Insurance Company to prove the insurance policy to show that they have not charged any amount extra for the complete liability. Therefore, the plea raised for the first time by way of filing cross-objection cannot be accepted and hence the cross-objection deserves to be rejected.

24. Before parting with, it will be relevant to mention here that the learned counsel for the appellants relied upon several judgments to substantiate his plea. As none of the legal plea is in dispute but in view of the facts of this case, I deem it not necessary to refer all those cases.

25. Hence the appeal of the appellants is allowed partly. The award dated 19.2.1986 is modified and following amounts are awarded:-

(1) Rs. 1,40,400/- On account of loss of Income.

(2) Rs. 25,000/- Mental and physical suffering to the claimants

(3) Rs. 5,000/- Mental and physical suffering of the deceased

(4) Rs 3,000/- Expenses for medicines and extra diets

(5) Rs. 2,000/- Funeral charges

(6) Rs. 25,000/- Additional amount on account of special damages Total : Rs. 2,00,400/-

along with interest @ 12% per annum on increased amount from the date of filing of the claim petition till 31.12.2000 and @9% per annum from 1.1.2001 till the date of realization. The cross- objection filed by the respondent-New India Assurance Company Limited is dismissed. The appellants are entitled for the costs of this appeal as well as costs of the cross-objection.