

Chander Vs. Bhawani Singh

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Court : Rajasthan

Decided On : Dec-11-1986

Reported in : 2(1988)ACC292

Judge : I.S. Israni, J.

Appellant : Chander

Respondent : Bhawani Singh

Advocate for Pet/Ap. : Shri. Bhargava

Judgement :

I.S. Israni, J

1. These four appeals arise out of the same award and they are disposed of by one judgment. These appeals have been filed under Section 110-D of the Motor Vehicles Act, 1939 (herein after called the Act), against the award, dated December 27,1985, passed by Motor Accidents Claims Tribunal, Jaipur, in case No. 69/1983, it will suffice to state for the purpose of these appeals that deceased Shobbraj, who was driving his car, while returning from Ajmer to Jaipur, alongwith his wife appellant Smt. Deepa and other appellants Shri Chander and Smt. Vandana, met with an accident near Hira Pura, on Ajmer Road with truck, which was alleged to be driven rashly and negligently at a fast speed. It is further stated that the truck came on the wrong side and dashed against car with such a force that the roof of the car ripped open and the car was dragged to a distance, the

occupants of the car were thrown; after the impact the truck went to a distance of 50 to 60 ft. and turned turtle. The driver of the truck after the accident ran away from the site. After recording evidence of all the parties and hearing the arguments, the Tribunal awarded different amounts to different claimants In appeal No. 112/1986, in which the compensation was claimed on account of death of the deceased person, the amount of 1,10,000/- was awarded to the claimants. In appeal No. 111/1986, Smt. Deepa claimed compensation on account of injuries received by her and she was awarded amount of Rs. 10,000/- on this count. In appeal No. 110/1986, Chander, another injured occupant of the car awarded Rs. 20,000/- and his wife Smt. Vandana, on account of some injuries, awarded amount of Rs. 20,000/- as compensation. The contention of Sh. H.M. Bhargava learned Counsel appearing for Smt. Deepa in her both appeals is that the only point for consideration in all these appeals is regarding enhancement of the compensation awarded as no appeal against the award has been filed by any of the respondents. It is submitted that it has been proved on the basis of income-tax-returns that the deceased was doing textile business from which his net income was Rs. 26,460/- per year which comes to Rs. 2,000/- p m. It is pointed out that the Tribunal has grossly erred in holding that since the textile shop was still running after death of the deceased Shobhraj, therefore, the dependents are not entitled to get compensation on the amount of the earning of deceased person The Tribunal in its own imagination thought that the claimants are entitled to receive compensation on amount of gross income of Rs 8,000/- p.m., which deceased Shobhraj would have earned as a good-sales man while he worked on the textile shop, owned by him. Therefore, the tribunal after taking amount of Rs. 250/- as personal expenses, fixed the amount of Rs. 550/- as dependency for the claimants. The Tribunal has stated looking to the trend of the various courts the span of life can be fixed at 65 years but applied multiplier of 15 years even though the deceased was only 38 years at the time of accident. It is, therefore, contended by the learned Counsel that the whole process of the Tribunal for arriving at the income of the deceased, ignoring the income proved by income-tax returns is fallacious and the 15 years multiplier applied is also very low, keeping in view the age of 38 years of deceased and the fact that the Tribunal itself held that span of life usually is 65 years age. It is further contended that the Tribunal has awarded a token amount of Rs. 5,000/-

on account of loss of consortium to the widow who was 30 years old at the time of accident and a nominal amount of Rs. 3,000/- has been awarded for loss of love and affection to the mother to the deceased. It is submitted that on account of this unfortunate accident, there is no child in the house of the deceased and therefore, the growth of the family has come to an end. The contention of the learned Counsel is that the compensation should be assessed at the proved income of the deceased which is Rs. 2250/- p.m. and after deducting 1/3rd amount, the net amount of dependency comes to Rs. 1460/- p.m. It is submitted that when the Tribunal has itself come to the conclusion that the life span should be placed at 65 years there is no reason why the multiplier of 27 years be not applied to this income for calculating the pecuniary loss under this head.

2. Dr. Vivekanand RW 4, was examined, who has proved Ex. 45, the injury report and has stated that one tooth of the claimant was completely broken, two became loose and another tooth ought to be taken out. Apart from this, she received injuries on nose, upper lip, knee and elbow of the hand. It is, therefore, submitted that the face of the claimant was disfigured and a meagre compensation of Rs. 10,000/- has been awarded. It is contended by the learned Counsel that it has been held by various courts that in case of injuries, the compensation granted to the claimants has to be on higher side because the injured person has to live with these organs and suffer the agony for whole life. Shri Satyawar Khemchandani, learned Counsel appearing for the appellant Chander, in appeal No. 110/86 has contended that the amount of compensation awarded to the appellant is not only grossly low but even the evidence on record has not been taken into consideration while arriving at the proper compensation that may be awarded to the appellant. It is contended that the appellant was running a handloom shop at Bhilwara and earning Rs. 1500/- p.m. It has come in evidence that the shop was completely closed for about a period of six months, while the appellant was under treatment and admitted for long time in hospital at Jaipur and Ajmer but nothing has been awarded to the appellant on this count. It is also contended that the appellant suffered grievous injuries on his right leg in which steel plate has to be fixed at three places and it is alleged that his leg has shorten by 1 inch, thus the appellant has become permanently physically handicapped person and the compensation awarded to the appellant is grossly inadequate, keeping the injuries in view. Apart

from the above injuries the appellant suffered fracture in his hand also. It is further submitted that the appellant's mandible bones of the face were also broken and he had to undergo plastic surgery on this account. It has come into the evidence that his face had to be tied by wire for three months and he had to live only on liquid diet for this period. Since the accident occurred near Hira Pura, he was first admitted in S.M.S. Hospital and thereafter in J.L.N. Hospital, Ajmer, as an indoor patient for a long period. This also shows that the appellant had to make expenses on his relatives, who come and attended upon him to Jaipur as well as other hospital at Ajmer. It is also contended that the Tribunal did not give him chance to get the certificate of doctor issued regarding appellant's having become handicap, proved, and the same has not been taken into consideration while awarding compensation to the appellant. It is also submitted that even though all the medical bills, amounting to Rs. 5,000/- Ex. 1 to Ex. 37 were produced before the Tribunal, have also been not considered while fixing the amount of compensation. It is, therefore, submitted that amount of Rs. 1,05,000/- as claimed by the appellant should be awarded to him as he will have to suffer on account of these grievous injuries throughout his life.

3. Regarding appeal of Smt. Vandana (115/86), it is submitted by learned Counsel that the appellant was only 25 years old at the time of accident and suffered extremely grievous injuries but was awarded a meagre amount of Rs. 20,000/- only whereas she claimed Rs. 68,000/- to be awarded to her as compensation. It is pointed out that Ex. 46 injury report and X-ray report Ex. 47, shows that she received four fractures in this accident. In all, she received eight injuries. It is pointed out that AW 6 Dr. R.C. Joshi has stated she will have some difficulty in sitting and getting up and in delivery also she is bound to face certain difficulties, which usually do not-occur normally. However, he could not said anything about any personal disability. AW 4 Dr. Vivekanand while proving the injuries has also stated that she received injuries of very grievous nature. It is submitted that even though medical bills of her treatment could not be preserved and produced, still, it could not be said that she did not make any expenses on them. Apart from this the expenses on her relatives while she was admitted in S.M.S hospital, Jaipur, alongwith her husband, have not been accounted for in the compensation awarded to her. It is also contended that when it has been opined by doctors that

she is bound to face difficulties at the time of delivery she is entitled to special compensation on this count also.

4. Shri Virendra Bhartiya appearing for National Insurance Company and owner of the truck Shyara Sunder submits that the Tribunal has committed no error in reducing the income of the deceased Shpbhra j since the shop owned by him is still running even after his death. He frankly conceded that the hypothetical comparison of the deceased owner of the shop with a salesman, who may draw Rs. 800/- as salary cannot be justified but in any case the total amount earned by the deceased cannot be taken into consideration while fixing the amount of compensation since the shop was running after the death of deceased also. It is also pointed out that Smt. Deepa widow of the deceased has admitted in cross-examination that the shop was still running and has further said that income-tax is paid on the income. It is, therefore, contended that since even after the death of deceased the textile shop is running the total income, earned by the deceased should not be taken while arriving at the amount of compensation payable to the appellants It is submitted by the learned Counsel that the compensation amount awarded to the appellants is just and proper. The Tribunal has taken care of all aspects of the matter and even though specific amounts under specific heads have not been awarded to some of the appellants but due consideration has been given to all the claims made by the appellants. It is, therefore, submitted that it calls for no interference.

5. I have heard all the learned Counsel and gone through the award and also the documents and evidence on the file. Taking appeal No. 112/1986, regarding compensation on account of death of deceased Shobhraj, first it is agreed by both the parties that even after the death of the deceased person the cloth shop run by the deceased is still continued and some income is derived from the same by the appellants. AW 3 Smt. Deepa, widow of the deceased has stated in her cross examination that the shop is still running and looked after by her servants and income is paid. The brother of the deceased AW 5 Baldey has stated that after the death of deceased Shobhraj, the shop is running and no income-tax is paid for the same. It may be pointed out that none of the respondents have cared to produce any evidence to prove the income that may be derived from the shop after the

death of the deceased person. The respondents could have easily called for the returns of the income tax from the department to prove their contention that the income tax is still being paid. Merely because AW 3 widow of the deceased, who is not used to give statements in Court of law has stated in her cross-examination that the income-tax is still paid, does not conclusively prove whether income-tax is paid or not in view of the submission of AW S, brother of the deceased, who has stated that no income-tax is paid and that the income of the shop has reduced.

6. Shri Bhargava, learned Counsel for the appellant has pointed out that it was the duty of the respondents to have proved the income of the shop after the death of the deceased person, if the respondents wanted that it may be proved what was the actual income derived from the shop even after the death of deceased person. He has placed reliance on the case of Ishwari Devi and Ors. v. Union of India and Ors. 1968 ACJ 141 in which it was held that it is for the claimants to adduce evidence and show what the income of the deceased was and what pecuniary loss they had suffered on account of death. Once they adduced such an evidence, it is then for the opposite party to adduce evidence and show what pecuniary advantage the claimants received by reason of death and which they would ask the Court to deduct from balance against the pecuniary loss shown by the claimants. In this case the respondents have produced no evidence what-so-ever. The learned Counsel placed reliance on several authorities of various High Courts including this Court, showing that no deductions on account of family pension, gratuity, L.I.C., P.F., deposits in bank etc. are allowed to be deducted while arriving at the amount payable to the claimants on account of death of a deceased person. Reference was made in this context to Urmila Kaur and Ors. v. Bapu Rajaram Kothale 1986 ACJ 267, Chand Kanwar v. Mannaram and Ors. 1986 ACJ 269, Meena Anana Anantha Krishnan and Ors. v. Western Coalfields Ltd. and Anr. 1986 ACJ 149, Baljit Sawhney and Anr. v. Jagtar Singh and Ors. 1986 ACJ 381. In the case of Chameli Wati and Anr. v. Delhi Municipal Corporation and Ors. 1984 ACJ 134, deceased was running a shop, which had to be closed after his death. The assets of shop were so d for Rs. 35 000/-. While awarding the compensation to the claimants it was held that such an amount cannot be deduced keepins in view that even receipt of insurance, provident fund, pension or gratuity benefits by he dependants of the victim must be excluded from consideration the award of the

compensation. In *Sudershan puri and Ors. v. Rajsthan State Road Transport Corporation and Anr.* 1983 ACJ 489, this Court had to consider the similar point. This was a case in which deceased was an officer and on his death, his wife was given employment as Lower Division Clerks by the employer of deceased husband. The point for consideration was whether the wages earned by her should be taken into consideration while fixing the amount of dependency which may be awarded as compensation. It was held that such an amount should not be taken into consideration because her earnings were on account of work done by her and cannot be adjusted against the value of the dependency.

7. In the present case, admittedly the shop is run even after the death of the deceased person, who was otherwise running the same. If after the death of the husband the widow is courageous to run the business of cloth and is able to earn something out of the shop and maintain her family, it cannot be said that the income derived by her is on account of death of her husband and therefore, the same may be deducted from the amount of compensation which may be awarded to the appellants. This cannot be termed many cases to be a benefit that she may be deriving on account of death of her husband. On the contrary it is commendable that the widow has turned up enough courage to keep the pot boiling and has been able to carry on the business. No business can be run while depending only on servants but the owner has to take interest personally and see that the business gives some profit. It can, therefore, be safely said that whatever income which has not come on the record as no evidence was produced by the respondents, is derived by the appellant due to her own work and therefore, this amount should not be deducted from the amount of dependency that may be calculated for awarding compensation.

8. Coming to the point of multiplier, the age of the deceased was admittedly 38 years at the time of accident and the Tribunal has given no reasons why only a multiplier of 15 has been applied in arriving at the compensation, which may be awarded to the appellants. Even if it is taken that the deceased could have actively looked after his business until age of 60 years, the multiplier of 22 years should have been applied to the amount of dependency to arrive at the compensation payable to the appellant. The age of the widow was 30 years at the time of

accident. Evidently on account of this accident, she lost her husband and her life can be said to have been plunged into darkness on account of this accident. It is easy to understand the life of widow has to pass in Hindu society and, therefore, of the considered opinion that looking to her young age amount of Rs. 15,000/- on account of loss of consortium should be awarded to meet the ends of justice on this count.

9. Coming to the consideration about the amount of dependency I have already stated above that there is no logic behind taking the income of the deceased to be Rs. 800/- per month and to consider him only as a good salesman. The Tribunal after keeping the income of deceased at Rs. 800/- p.m. deducted 1/3rd for his personal expenses and kept the amount of dependency at Rs. 550/- p.m. i.e. 2/3rd of the income of the deceased. It is on record by way of income-tax-returns, filed in the Court that the deceased was paying income-tax on amount of Rs. 26,000/- Rs. 400/- per year and his income came to Rs. 2250/- p.m. Deducting usual amount of 1/3rd for his personal expenses the remaining 2/3rd income can be rounded at Rs. 450/- p.m. as amount to be taken into consideration as dependency for each month. The appellants shall, therefore, be entitled to receive amount of Rs. 1450 x 12 x 22 = 3,82,800/-. Therefore, the claimants shall be entitled to receive in all Rs. 4,03,800/- (four lacs, three thousand and eight hundred). On this amount, they shall be entitled to receive interest at the rate of 12% p.a. from the date of filing the claim petition.

10. Taking the appeal No. 111/1986, which is regarding injuries suffered by Smt. Deepa. She has stated in her statement that her four teeth were broken, on account of this incident. She has also stated that she suffered injuries on upper lip, face, back, hand and elbow etc. AW 4 Dr. Vivekanand has also described the injuries suffered by her. The trial court has awarded amount of Rs. 10,000/- under all heads to the appellants. The learned Counsel has placed reliance on *Himachal Road Transport Corp. Shimla v. Neena and Anr.* 1987 ACJ 642 in which the High Court of Himachal Pradesh awarded Rs. 40,000/- on account of loss of all the four incisors of the upper jaw. It was also observed that even though artificial teeth are restored, still some disfiguration remains in the face. The learned Counsel referred to the appeal in which this Court (Hon. Justice S.N. Bhargava), raised amount of

Rs. 700/- to Rs 17,000/- on account of loss of one teeth of young girl. However, the learned Counsel is not in a position to give exact number of appeal and the date of the judgment. The contention of Shri Bhartiya, appearing for some of the respondents is that even the appellant herself has not made any mention of disfiguration of her face, therefore, this point is not involved in this appeal.

11. In S.B. Civil Misc. Appeal No. 142/1979 Milapchani Kothari v. Ram Prakash and ors. decided on 31-8-84, this Court held that amount of Rs. 10,000/- should be awarded to a sixty years old man, who had sustained some abrasions in the accident. It was also observed that in a case of physical injury, the compensation amount should be on high side because the person concerned has to suffer the injury for pretty long time. There is no doubt that when an appeal is filed by an injured person, it is the injured himself, who wants compensation for the shock and mental agony, suffered by him on account of the unfortunate accident. Apart from this the injured person will have to live with the effect of physical injury that he has to suffer throughout his life. I am, therefore, of the opinion that the award should be such which should give reasonable compensation to be injured person on this count. In this case the young lady of thirty years lost her four teeth and also suffered several other injuries. Without mentioning the particular amount awarded under different heads, like mental shock, pain of injuries and loss of teeth, medical expenses. I feel that amount of Rs. 25,000/- shall meet ends of justice in this case. The appellant shall also be entitled to receive interest at the rate of 12% p.a. from the date of claim petition on the enhanced amount, which was also awarded by the Tribunal itself.

12. Taking up the appeal No. 110/1986, the injured-appellant Chander has been awarded amount of Rs. 20,000/- as compensation. The , appellant Chander, AW 1, in his statement has stated that his right leg was fractured at three places and he had remained for five months as indoor patient in hospitals. He has also stated that his mandible bones were also fractured. His left hand was also broken and he received injuries in his right hand also. He was under plaster for three months and had to undergo operation more than ones. He further states that he cannot bend his knee and is not in a position to lift any weight nor is he able to run. He also not climb staircase. For three months, he had to remain on glucose and milk as his

face was tied by wire AW 4 Dr. Vivekanand has proved injury report Ex. 48 and also the X-ray report. No evidence has been adduced to rebut the statement of AW 4 regarding his injuries. It can be easily seen from the statement of the appellant and also from the injury report that the appellant suffered serious injuries on various parts of his body in the accident. He had remained in hospital at Jaipur for 20 days during which his parents and other members of the family had to come to Jaipur and attend him Medical bills amounting to Rs. 4725/- Ex. 1 to Ex. 36 have been produced, I, therefore, award amount of Rs. 4725/- on account of expenses on medicines as is evident from the bills produced. There is no doubt that extra expenses were made on looking after the appellant while he was admitted in S.M S. hospital at Jaipur and members of his family had to come and look after him for that period. I, therefore, award amount of Rs. 2,000/- on this count to the appellant. The appellant was running his business at Bhilwara, which remained closed for a period of five months while he was under treatment at Jaipur and Ajmer The amount of Rs. 8,000/- claimed by appellant seems to be quite reasonable. I, therefore, award Rs. 8,000/- on account of closure of business to the appellant. A Photostat copy of certificate, regarding appellants being physically handicapped has been issued by the Orthopedics Surgeon, M.G.H. Hospital, Bhilwara, which shows that the appellant is suffering from physical disability. As has been stated by the appellant also he is not in a position to lift any weight or bend his knee, nor is he in a position to run after this accident This clearly shows that he is suffering from several disabilities, which he will have to bear throughout his life as the accident has taken place while the appellant was 28 years old. I, therefore, award amount of Rs. 20,000/- for the physical disabilities suffered by the' appellant. In this case the injured appellant is himself the claimant who had to undergo extreme type of physical pain and mental shock He had to remain in hospital under treatment as indoor patient for about five months and also underwent some operations. I, therefore, feel that amount of Rs. 20,000/- shall meet the ends of justice in this respect. Thus the appellant shall be entitled in all to receive amount of Rs. 54,725/- alongwith interest @ 12% p.a. from the date of filing of the claim petition, which has been already awarded by the Tribunal also. It is made clear that if any amount has been deposited by the Insurance Company, it shall not be liable to pay interest on its deposited amount from the date of its

deposit.

13. Taking appeal No. 115/1986, filed by Mrs. Vandana, on account of accident, she was awarded amount of Rs. 20,000/- in respect of all the heads claimed by her. In her statement, appellant AW 2 has stated that she suffered severe injuries on her pelvis, left forehead, left-leg, knee and left ear. She remained as indoor patient in S M.S. Hospital at Jaipur. She remained under plaster for a period of three months. AW 4 Dr. Vivekanand has also proved the injuries caused to her. Dr. Joshi AW 6 Radiologist has stated that on account of serious injuries in the pelvis, she will definitely suffer difficulty at the time of delivery and will have also to suffer during her life time in sitting and getting up. The appellant suffered two fractures in pelvis and two fractures in left forearm. Even though she has not filed any bills regarding medical expenses, there is no doubt that when she was under treatment for quite some time, some expenses ought to have been made on this account. I, therefore, award amount of Rs. 2,000/- on account of medical expenses to the appellant. The statement of AW 6 Dr. Joshi clearly shows that the young appellant shall have to suffer physical pain throughout her life whenever she has to deliver any child. This, in fact, is a sort of permanent disability, from which the appellant shall have to suffer till she is alive. Apart from this she will always be having difficulty whenever she sits or gets up for any work. Keeping the permanent disability, in view of the award of Rs. 25,000/- on this count, shall meet the ends of justice. In this case the injured appellant is herself the claimant, who had undergone extreme mental shock on account of this unfortunate accident and remained as indoor patient for quite some time. She also had to be under plaster on this count. She will also suffer physical pain throughout her life keeping in view the nature of injuries described by the doctors. I, therefore, award amount of Rs. 20,000/- to her on this count. Thus, she will be entitled to get, in all amount of Rs. 54,000/- as compensation, along with interest @ 12% p.a. from the date of claim petition. The Insurance Company shall not be liable to pay interest, on any amount which has been deposited before the Tribunal, from the date of deposit.

Appeals allowed with no order as to costs.