

State and ors. Vs. Bilkish Banu and ors.

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Court : Rajasthan

Decided On : Sep-04-1985

Reported in : 1(1987)ACC296

Judge : P.C. Jain, J.

Appellant : State and ors.

Respondent : Bilkish Banu and ors.

Advocate for Pet/Ap. : Shri. Vyas

Judgement :

P.C. Jain, J.

1. This appeal has been directed against the Judgment and Award passed by the Claims Tribunal, Udaipur, dated 7-9-81 in case No. 275/78 (23/78).

2. Briefly stated the facts of the case are that the deceased Shajuddin was a temporary employee at Mahi Dam Project, Banswara, while travelling in Truck No RJB 420 which was used as a vehicle for transporting the employees of Mahi Project met with an accident while going to Mahi Dam to Banswara city. On account of the death of Shajuddin in the accident the claimants filed a claims petition before the Accident Claims Tribunal, Banswara, claiming a sum of Rs. 1 lac. The claimants are Smt. Bilkish Banu widow of the deceased Shajuddin Shri

Vahiduddin the father of the deceased and Smt. Asha Bibi mother of the deceased. In the claims petition it was alleged that the accident took place on 17th December, 1977, at about 2.30 P.M. near Kundla-sarhad District Banswara, when the vehicle was going down to hilly terrain. The driver of the vehicle is Kanhiya Lal and the owner of the vehicle is State of Rajasthan, as the vehicle belongs to the State, it was not insured. The claimants contended that at the time of death Shajuddin was getting the salary of Rs. 269/- per month. Father, mother and wife were all dependent upon Shajuddin. At the time of death, the age of deceased was 22 years he was hard-working and he had a bright future. The State and other non-petitioners have filed joint written statement and contended that the accident took place in the course of out of employment. It was also contended that the deceased was not drawing salary of Rs. 269/- per month. It has also been pleaded that Shajuddin died on account of his own negligence. Shajuddin was travelling in the truck. After leaving the job at Mahi Dam before the close of the day, Shajuddin's duty was up to 4-30 P.M. and without giving any information or seeking any permission from the person concerned, he left the job and travelled in RJU 4290. The driver of the vehicle filed a separate written statement denying the allegations.

3. To prove the case the claimants produced evidence of Smt. Bilkish Banu was examined as AW 1, Shri Vahiduddin was examined as AW 2, Bhagwatilal as AW 3, Arvind as AW 4, Mangilal as AW 5, Nishar Ahmed as AW 6, Asha Bibi as AW 7, Balwant Singh as AW 8 and Mahesh Chand as AW 9, and, on behalf of the non-petitioners Kanhiya Lal examined as AW 1 and no other evidence was produced. The petitioners also filed FIR and site-plan. After appreciating the entire evidence on record, the learned Claims Tribunal gave an award of Rs. 37,500/- in favour of the claimants. In the award, it was directed that Rs. 30,000/- will be paid to Smt. Bilkish Banu and Rs. 7,500/- will be paid to Smt. Asha Bibi and State was fully directed to pay interest at the rate of 6% p.a. from the date of award till realisation.

4. Aggrieved by the award passed by the Accident Claims Tribunal, State has filed the appeal, contending that death of Shajuddin did not occur in the course and out of employment and at the time when the accident had taken place he was not in the employment of the State as he left the Mahi Dam Project, Banswara, at about

2 P.M. in Truck No. RJB 420 un-authorisedly. He left the project without completing duty and without permission from the authorities. It is also contended that the amount of compensation awarded is on a very higher side.

5. The learned Dy. Government Advocate, Shri Rajendra Vyas has submitted that as the accident did not take place while the deceased was in the course of and out of employment and because the truck which was employed by the State, and was doing the work for the State as such no liability can be fastened on the State as the sovereign is not liable for payment of any compensation in the circumstances enumerated by the claimants. It has also been submitted that before the filing the petition the claimants had filed their claims before the Workmen Compensation Commissioner and as such they are debarred to file the case before the Accident Claims Tribunal. Controverting the submissions made by Mr. Vyas, the learned Counsel for the State ; Shri R.K. Soni the learned Counsel for the claimants has submitted that the award given by the Tribunal is perfectly just and reasonable and Court should not interfere in the appeal. He has further submitted that no cogent ground for interference has been made by the learned Counsel for the State is and the matter of quantum of compensation to the appellate court should be slow is interfering in the appeal unless the Tribunal had applied wrong principles of law or mis-directed itself or the amount awarded is too low or much on higher side. He submitted that no circumstances for any interference has been made out by the appellant and as such the appeal should be dismissed.

6. Mr. Vyas has submitted that in view of Section 110-AA of the Motor Vehicles Act, 1939, having ones opted for filing a claim before the Workmen Compensation Commissioner, the jurisdiction of the Claims Tribunal was not available to the claimants. Hi submits that undoubtedly the option is given to the claimant either to prefer claim under the Workmen Compensation Act or before the Accident Claims Tribunal to the claimants where the death or bodily injury to any person given right to claim for compensation, either under the Motor Vehicles Act, 1939, or under the Workmen Compensation Act, 1923. Though, the State has taken the plea that a claim petition was filed by the claimants before the Workmen Compensations Commissioner but the State has not proved this fact. There is no evidence on record to substantiate the contention made by the learned Counsel lor the State.

Not a single sentence has been put in the cross-examination by the appellant to Smt. Bilkish Banu A.W. 1 or to the father or mother of the deceased. They were also examined as witness for the claimants. Thus, the findings given by the Claims Tribunal on issue No. 3 is perfectly justified. Thus, there is no force in the submissions made by the learned Counsel for the appellant. Shri Vyas, learned Counsel for the appellant pointed out that there is no evidence to prove that the deceased was drawing a salary of Rs. 269/- per month. He was a work-charge employee employed on daily wages even as per statement of Smt. Bilkish Banu, Sajuddin was getting Rs. 220/- per month and he used to give Rs. 220/- per month to her. Shri Vahiduddin A.W. 2 was getting Rs. 300/- per month and this amount was given to his mother. Thus, there remains solitary statement of Smt. Bilkish Banu the wife of the deceased. There appears to be the reason to disbelieve her statement. Learned Counsel for the claimants could not point out as to how the claims for salary of Rs. 269/- per month has been made. However, the Claims Tribunal has correctly gave the finding that the deceased was getting the salary of Rs. 220/- per month.

7. The question now remains for consideration is if the accident was caused by the driver of the vehicle rashly and negligently and that on account of his act where the State is responsible. A.W. 3 Bhagwati Lal has deposed that he was with the deceased in the same truck on 17-12-77 when it met with an accident. The accident was caused on account of rash and negligent driving by the driver of the truck. Arvind A.W. 4 also corroborates his statement. The driver of the vehicle has also been examined who has deposed that he heard some noise of brake-down. He, therefore, applied the brake but could not control the vehicle as there was a down track on the hilly terrain.

8. From the appreciation of evidence, I am of the opinion that the learned Claims Tribunal has correctly gave a finding that the driver was rash and negligent.

9. It is true that the truck bearing No. R.J.B. 420 belongs to the State and Kanhiya Lal was in the work of Mahi Project. The work of the project cannot be regarded as sovereign function. Shajuddin was travelling in the truck with the permission of the driver, and, also further, the facts that the said truck was used on Mahi Dam

project for carrying the employees as such, the State is undoubtedly responsible for the wrong committed by the driver of the vehicle. The State is vicariously responsible for the negligent act of the driver of the vehicle. The accident had taken place, in which Shajuddin died. The question, thus, remains about the quantum of compensation. The Claims Tribunal assessed the dependency amount at the rate of Rs. 150/-per month which appears to be quite reasonable. Mr. Vyas, the learned Counsel for the appellant submits that the multiplier of. 25 is on higher side and as such the amount of compensation, awarded in the case is on much higher side and as such it can be said that the learned Claims Tribunal mis-directed itself on the question of award of compensation and this Court is, therefore, entitled to interfere with quantum of compensation. He has put reliance on a Division Bench Judgment of this Court M(s. Automobile Transport Pvt. Ltd. v. Dewalal, 1976 WIN 783. The learned Division bench laid own certain important guide lines for determining the amount of compensation, which are as follows:

1. When the court awards damages to the dependents for death due to negligence, it awards one lump sum calculated by taking the yearly pecuniary loss and multiplying it by the number of years' purchase.
2. It does not divide it into two parts, such as special damages upto the date of trial and future loss after the date of trial. The Court treats it as damage inflicted once and for all at the time of accident.
3. It has to follow the rule of basic figure, a certain number of years' purchase, and allowance for lump sum down.
4. If the period is a long one, the 'multiplier' will be much smaller than the number of years, even where contingencies which are allowed for are of small account. The reason is that while in so far as the lump sum of damages is still unspent it will be earning interest and the damages and interest together will be adequate to last out for the period. The reason is that a prudent person receiving a lump sum, to make good this loss over a periods, expected to invest it and to use it up gradually.
5. The sum to be awarded as damages should be equal to the cost of purchasing an annuity of the relevant amount for the relevant period.

6. ...

10. On the basis of the aforesaid propositions laid down by the learned Division Bench of this Court, Mr. Vyas the learned Dy. Government Advocate, contended that the multiplier adopted should not be 25 but should be 15 only in the facts and circumstances of the case. I am of the view that multiplier of 15 will meet the ends of justice. If the amount is calculated by taking dependency amount as Rs. 150/- per month and taking the said multiplier, the amount of compensation will come to Rs. 27,000/-. This amount, if put in the fixed deposits will positively yield an interest said would be more than Rs. 150/- per month as the claimants are both widows and it is not disputed that value of the rupees is rapidly falling, it will not be appropriate in the facts and circumstances of the case to scale down the amount of compensation.

11. For the reasons mentioned above, this appeal is partly allowed. The amount of compensation is now reduced from 37,500/- to Rs. 27,000/-out of which Smt. Bilkish Banu shall got Rs. 20,000/- and balance of amount of Rs. 7,000/- shall be payable to Smt. Asha Bibi, the mother of the deceased. This amount shall be payable with interest @ 6% per annum with effect from the date of the award, viz. 7-2-1981. Parties shall bear their own costs.