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Court : Himachal Pradesh

Decided On : Dec-21-1971

Reported in : AIR1972HP113

Judge : Chet Ram Thakur, J.

Acts : Motor Vehicles Act, 1939 - Section 110B

Appeal No. : F.A.O. Nos. 8, 9 and 10 of 1971

Appellant : Krishna Devi and ors.

Respondent : State and ors.

Advocate for Def. : A.S. Bhatnagar, Adv.

Advocate for Pet/Ap. : R.K. Gupta and; D. Gupta, Advs.

Judgement :

Chet Ram Thakur, J.

1. These three appeals arise out of the judgment and order, dated 80-12-1970, passed by the Motor Accidents Claims Tribunal, Mahasu. The Tribunal had awarded Rs. 30,000/- to the claimants of Banarsi Dass, and Rs. 35,000/- to the claimants of Gur Saran Dass, who had died in a bus accident on 25-10-1969 at 7.45 P.M. at a place near Katchi Ghati on the Kalka-Simla road due to the rash

and negligent driving on the part of the driver of the Bus No. HIM 4656 belonging to the Himachal Pradesh. Government.

2. In the written statement it was averred that there was no negligence on the part of the driver. But the learned Tribunal found that the bus was driven negli-ligently and rashly and the accident was the result of the same, and he accordingly awarded the aforesaid amounts to the claimants of the two deceased persons in the two applications, which were disposed of by the learned Tribunal, vide a single judgment.

3. The claimants of Banarsi Dass deceased are not satisfied with the award of the Tribunal and their contention is that the award made by the Tribunal was far too low and that they were entitled to the amount of Rs. 1 Lakh and 50 thousand as claimed in their petition. The State also filed two separate appeals against the award contending that the awards made by the Tribunal in the case of the claimants of Banarsi Dass and Gursaran Dass were far too excessive and that the Tribunal had also not correctly determined the life expectancy of the deceased as also of the claimants in both the cases and, therefore, the State prayed for reduction of the amounts of money awarded by the Tribunal in the two cases.

4. There is no dispute with regard to the liability. The only dispute is with regard to the quantum payable to the claimants. The contention of Krishna Devi and other appellants is that the amount awarded by the Tribunal is far too low and the same may be enhanced, whereas the contention of the State is that the amounts awarded to the claimants of the deceased in the two cases are too excessive and that the same may be reduced.

5. First, I will deal with the appeals of Krishna Devi and others versus State and State v. Krishna Devi and others. Krishna Devi is the widow of Banarsi Dass deceased and she is 40 years of age and the deceased, as stands proved from the testimony of P.W. 1, on the date of his death was 44 years of age. Besides Krishna Devi, the deceased has left behind two daughters and three sons and they are also the claimants. Sucheta, daughter is 19 years, Seema, daughter is 5 years old, Naveen, Deepak and Sanjeeb, sons, are 12, 10 and 8 years of age respectively. Then, he has got a mother who is also a claimant and she is 63 years

of age. There is no dispute with regard to the age and the P.W. I has proved the ages and there is no rebuttal from the respondents.

6. The Tribunal fixed the monthly income of deceased Banarsi Dass at Rupees 300/-. The claimants had given the monthly income of the deceased at Rs. 400/-. It is also apparent from the statement of P.W. 9, the husband of one of the partners of the Beedi Firm, where the deceased was working as a salesman that the deceased was paid a monthly salary of Rs. 205/-. He was paid Rs. 60/- as diet money allowance and Rs. 160/- as sales commission. It is stated by P.W. 9 that the deceased also used to deal with supply of condensed milk and stamp collecting was also his hobby and that from these sources also he used to make Rs. 350/-. P. W. I has also stated that he used to earn about Rs. 300/- from other sources besides Rs. 400/- that he used to get as pay as a salesman in the Bidi Firm. But, I am afraid, if this type of statement can be pressed into service to prove the tall claim. It had been better if the claimants had cared to produce some of the customers or the dealer from whom he had been making purchases of the condensed milk for purposes of sale. Therefore, in the absence of any cogent evidence, the statement of the claimant P.W. I and P.W. 9 cannot be held sufficient to prove the claim with regard to the other sources of income of the deceased Banarsi Dass. The petitioner, as would be evident, had fixed the total income against column 6 in the pro forma as prescribed for the petition at Rs. 400/- per month and, therefore, she cannot now make out a different case from what she had pleaded. The learned Tribunal fixed the income at Rs. 300/-.

It is apparent from the statement of P.W. 9 coupled with the statement of P.W. 1 that the petitioner was getting Rs. 205/-as salary and Rs. 60/~ per month, as travelling allowance and Rs. 160/- as commission money. The total income, therefore, worked out at Rs. 425/-. Therefore, in my opinion, the petitioner-claimants had proved that the deceased was making a total earning of Rs. 425/- in all per month. Now, the question is how the damages were to be calculated in such a case. The claimants were the dependants of the deceased and now they have been deprived of the pecuniary benefits that they had been deriving from the deceased, and the principle, as enunciated in such a case, is, as laid down in Gobald Motor Service Ltd. v. Veluswami, AIR 1962 SC 1.

'In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the plaintiffs to establish the extent of their loss.'

The same view has been reiterated in M/S. Sheikhupura Transport Co. Ltd. v. Northern India Transport Insurance Co. Ltd., AIR 1971 SC 1624. Now, bearing in mind the principles as laid down in the above authorities, we have to see whether the learned Tribunal has assessed the compensation taking into consideration all the circumstances.

7. It has been seen that the learned Tribunal has found the age of the deceased at 44 years on the date of his death and the same remains uncontrovert-ed. The learned Tribunal has not decided the case on the basis as to for how long he would have lived or what is the present average expectation of life. But the Tribunal has assessed the compensation keeping in view the fact that he would have continued to work in the Firm for another 20 years.

8. In my view, the observations of the learned Tribunal are not correct that the deceased would have supported the family only so long he would have continued to work, and according to the Tribunal he would have continued to work for another 20 years in the Firm. That may be so, but the obligation of the deceased, if he had not died, to support his family was till his lifetime and he would have found other vocations or avenues of income so as to support his family if after 20 years the Firm were to dispense with his services. So, that way, we are not to take into consideration the period for which he would have continued to work in that particular concern, rather we have to see as to how long he would have lived and would have thereby continued to contribute towards the support of the family. In

the light of the above, I am of the view that it was necessary for the Tribunal to determine the span of life.

9. I have gone through the statements of P. W. 1 and P. W. 9, because they are the only witnesses in the case whose testimony can be said to be relevant for the present purposes. P. W. I has stated that the grandfather of the deceased had lived up to the age of 80 and the father of the deceased lived up to the age of 75 years, and that his mother was 63 years of age. So, from this, it could safely be inferred that the persons in the family of the deceased had lived to a very long age and the deceased also could be expected to have lived to a long age if his age had not been cut short by the accident. In that way, it could be said that he would have at least lived up to the age of 70 and that is the trend of the authorities also that have been cited at the Bar by the learned counsel for Krishna Devi and others, appellants, that the present expectation of life is 70 years. The authorities are Shiv Prasad Gupta v. S. M. Sabir Zaidi, 1967 Acc CJ 321 = (AIR 1968 All 186); Gomathi Ammal v. Rama Chandran Pillai, 1967 Acc CJ 15 (Mad); Mrs. Savitri Devi v. Malerkotla Bus Service (P) Ltd., (1969) Acc CJ 173 (Punj); Sukhdev Singh v. Pepsu Road Transport Corporation Patiala, 1969 Acc CJ 197 (Punj & Har) and T. V. Gnanavelu v. D. P. Kannaya, 1969 Acc CJ 435 = (AIR 1969 Mad 180).

The deceased, therefore, could render the pecuniary assistance and aid to the members of his family upto the age of 70 years.

10. Banarsi Dass died at the age of 44. I have fixed his span of life, in the face of the authorities cited above, and in view of the lower incidence of mortality because of the control of various diseases by the modern drugs, at 70 and, therefore, the deceased would have lived for another 26 years and in the case of his children, who are below 21 years of age, he would have definitely been a source of benefit or he would have continued to contribute towards their maintenance, etc., for another 26 years if the claimants were mainly to depend upon him. But, here again, we have to see that the mother was 63 years of age on the date of death of Banarsi Dass and she also could be expected to have lived upto the age of 70 and, therefore, she was also deprived of this pecuniary advantage due to the death of her son for 7 years. The widow was 40 years of age and she is also

expected to live for another 30 years; the husband was to have lived for another 26 years and, therefore, she is deprived of pecuniary advantage for 26 years. The eldest daughter is 19 years of age and she is of a marriageable age and after marriage she could not be expected to depend upon the resources of her father and she could be maintained by her father only for another 2 years at the most. The other daughter is 5 years and she is still in her kindergarten standard and she was also expected to be supported by her father till er marriage, i,e., till she attained the age of 21 years i.e., for another 16 years. Naveen could be expected to be supported for another 10 years, Deepak for another 12 years and Sanjeeb for another 14 years and thereafter they would have become quite independent after having got their education. Therefore, it is for these years that the dependants of the claimants have been deprived of the support and the pecuniary advantage' from their father. But the learned Tribunal did not take into consideration these facts.

11. Next is the question about the amount that the deceased could have spared out of his income for the maintenance of his family after having deducted the expenditure on his personal needs and requirements. His income, as already stated above, had been proved at Rs. 425/- per month and the deceased, in my opinion, would have spent about Rs. 125/- on his personal wants and the remainder of the amount he could be expected to have contributed towards the expenditure of the family. So, in the light of the above, in my opinion, the Tribunal was also right in holding that the claimants were entitled to the pecuniary benefits from the deceased at the rate of Rs. 300/- per month.

12. The claimants were entitled to the pecuniary benefit from the deceased at the rate of Rs. 300/- per month and the period, in my opinion, should not be in any case less than 26 years keeping in view the longevity of the members of the family of the deceased as also his physical condition. The claimants could be paid by the deceased at the rate of Rs. 300/- per month for a period of 26 years amount to Rs. 93,600/-. But it may be stated here that the claimants are getting this amount in a lump sum quite in advance. Moreover, the dependants are not deprived of this pecuniary advantage for a full period of 26 years for which the deceased was expected to have lived if his life had not been shortened by the accident. The

children, after completion of their education and marriage, would become independent and the mother is also above 60 years and it is only the widow, who is deprived of this pecuniary advantage for a longer period, because she was solely dependent on her husband and she is expected to live for a longer period keeping in view the background and the history of the family of the deceased with regard to the longevity. Therefore, on account of these circumstances, some discount has got to be made for making available this amount in a lump sum. There is no hard and fast rule as to what should be the amount which should be deducted. Some amount of conjecture and surmise in such cases has got to be inserted. In my opinion, the claimants would be properly and adequately compensated after making a deduction of Rs. 43,600, i.e., in all the claimants be held entitled to an amount of Rs. 50,000/-. Therefore, keeping in view all the circumstances, it appears to be reasonable that the claimants were to be made available this amount by the deceased if he had not died, after having deducted all the amounts by way of expenditure in meeting his own personal requirements and needs.

13. The learned Tribunal also has failed to apportion the quantum of compensation amongst the different claimants and it is necessary in order to avoid any further litigation that the share of each claimant be specified separately. In my opinion, the shares, keeping in view the circumstances, i.e., the pecuniary loss to be suffered by each of the claimants separately, the amount is apportioned as hereunder and each is entitled to the amount shown against their names:

Krishna Devi

Rs. 12,660

Sucheta

Rs. 1,265

Seema

Rs. 10,125

Naveen

Rs. 6,962

Deepak

Rs. 8,225

Sanjeeb

Rs. 6,325

Mother

Rs. 4,438

14. It had also been contended by the learned counsel for the respondents on the strength of Jainab Bai v. Madhya Pradesh State Transport Corporation (1969) Acc CJ 274 (Madh Pra), and Vinod Kumar Shrivastava v. Ved Mitra Vohra, 1970 Acc CJ 189 = (AIR 1970 Madh Pra 172), that he may be allowed interest at 4 per cent. But I do not find any cogent reason to grant any interest to the claimants in this case, as they have already been allowed a lump sum in advance.

15. The learned Tribunal awarded a total amount of Rs. 30,000/- in the case of the claimants, viz. Krishna Devi and others, but this award is really low keeping in view the circumstances as stated above and the Tribunal was further wrong in not apportioning the same. Since the evidence was there, therefore, I have apportioned the compensation which works as stated above, and therefore, the award as given by the Tribunal is enhanced by another Rupees 20,000/-. The State also has filed an appeal and the same fails. In view of that, the parties are left to bear their own costs in both the appeals. The result, therefore, is that the appeal of Krishna Devi and others succeeds to the extent as stated above and the award of the Tribunal is enhanced by another Rs. 20,000/- and the apportionment between the respective claimants is to be made as indicated above and they are to be paid their shares in accordance with the directions of this Court. Therefore, these two appeals are decided accordingly.

16. Next I come to the appeal filed by the State against the award of Rs. 35,000/- given by the learned Tribunal to the claimants of Gursaran Dass in Claim Petition No. 23-M/2 of 1969 of his Court. The claimants in this case were Smt. Raj Kumari, the minor widow of late Gursaran Dass, aged 17 years and Smt. Sunatha, the mother of the deceased. They claimed Rs. 1,76,400/-. The deceased at the time of his death was 21 years of age. This is borne out from the statements of P.W. 6 and P. W. 7, the father and mother of the deceased respectively. There is no rebuttal of this evidence and, therefore, it stands fully established that the deceased was of 21 years of age at the time of his death. It is also conclusively proved from the statements of P. Ws. 5 and 7 that Smt. Raj Kumari is the widow of the deceased and she was 17 years of age at the time of the death of her husband.

17. It is also borne out from the statement of Sheetal Prasad that the deceased was in perfect health and that the father of the witness died at the age of 55 and that his mother died at the age of 50. Barring this evidence there is no other evidence. Therefore, it follows that the deceased whose father is a betel seller was a man of an ordinary walk of life and the deceased, it is stated by the witnesses, rendered a helping hand in the business of betel selling and he too had been going outside Simla to supply betel to his customers at Shogi, a place 9 miles down on the Simla-Kalka Road. Therefore, it cannot be said that the prospects of the deceased were very bright and he was also pursuing the paternal profession of a betel seller, which does not require too much capital nor does it yield an income which may be said to be more than what is adequate to make, both ends meet. The learned Tribunal has fixed the income on the basis of the statement of the father and the mother at Rs. 200/- per month. I think this appears to be not a very high estimate of the income keeping in view the present day high cost of living and the price of commodities, and I am fully in agrement with the findings of the learned Tribunal in the matter of the assessment of the income of the deceased at Rs. 200/- per month by sale of betel at outlying stations from Simla, and there is a likelihood that in future there could be some prospects of an increase in his income. However, the Tribunal has fixed Rs. 200/- per month and I do not find any reason to differ with the findings with regard to the income of the deceased.

18. It is obvious that the grandparents of the deceased died at an age between 50 and 55 and it is, I think, because of their mediocre conditions or living and that they could not afford a good standard and nutritious diet and the deceased also therefore, because of his mediocre social status, could not be expected to afford a good living so as to live up to a long age and due to the stress and strain of work, he would not have attained an age which has been fixed by the authorities cited above, as the average span of life of 70 years and the estimate of his span of life fixed by the Tribunal at 60 also appears to be quite moderate and reasonable and it does not brook any interference.

19. The Tribunal assessed the compensation at Rs. 90,000/- and thereafter made a deduction because of the money being paid in lump sum in advance and the total amount of compensation awarded was Rs. 35,000/-. It may be stated here that the learned Tribunal has taken only one factor into consideration that the widow might remarry and it is only on that account that he had made the deduction. But he has perhaps forgotten to take into consideration the other fact also that the mother, who is a claimant in this case, is 40 years and she cannot be expected to live beyond 50 years, i.e., she has been deprived of this pecuniary benefit because of the shortening of the life of her son by the accident for another 10 years. It may also be stated that the mother was not dependent upon the earnings of her son, rather she is being supported by her husband, who is also of the same age, i.e., 40 years and he could render financial assistance to the mother of the deceased till his lifetime. Therefore, the mother was not totally dependent on the earnings of her son and that way, in my opinion, the compensation awarded to the present claimants in the case assessed by the Tribunal appears to be on the high side. In my opinion, after having taken into account the prospects of the young widow re-marrying, and the mother who was not solely dependant on the deceased and who may not live for long, this amount needs to be further reduced and I think the reasonable amount that should have been awarded in the case should not have exceeded Rs. 20,000/-. It is undisputed that in such cases there cannot be arithmetically accurate calculation and a great amount of conjectures and surmises have got to be made the basis and on that account roughly the compensation in the present case should not have been more than Rs. 20,000/- and this compensation of Rs. 35,000/-, therefore, is really

excessive and the same is reduced to Rs. 20,000/-, and the appeal of the State, therefore, succeeds to this extent.

20. The amount is to be paid to the widow of the deceased as also to the mother, and this amount has got to be apportioned. The mother and the widow would get this amount in the ratio of 10:33, that is to say, the mother would get Rupees 4,651/- and Smt. Raj Kumari, the widow of the deceased, would get Rs. 15,349/- keeping in view the ages and the expectation of their lives.

21. In the light of the above, this appeal is decided accordingly. However, I pass no orders as to costs in this appeal also. Thus, all these three appeals stand disposed of by this judgment as indicated above.

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