

(1991) 08 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 68 of 1989

Anju Behal and Others

APPELLANT

Vs

Rajasthan State Road Transport Corporation

RESPONDENT

Date of Decision : 18-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2

Citation : (1993) ACJ 87

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Advocate : D.K. Parihar and D.D. Calla, for the Appellant; P.K. Bhansali and Sanjay Tyagi, for the Respondent

Final Decision : Allowed

Judgement

B.R. Arora, J.—These two appeals are directed against the award dated December 7, 1988, passed by the Judge, Motor Accidents Claims Tribunal, Sri Ganganagar, in Claim Case No. 21 of 1985 (Anju Behal v. Rajasthan State Road Transport Corporation) and Claim Case No. 100 of 1985 (Ramesh Rani v. Rajasthan State Road Transport Corporation), by which the learned Judge of the Tribunal allowed the claim petitions in part and awarded the compensation to the tune of Rs. 3,89,000/- and apportioned the compensation so awarded amongst the various claimants and the dependants.

2. Dr. Vinod Kumar Behal, who was working as the Incharge, Primary Health Centre, Dalimir Khera, District Firozpur (Punjab), had come to Sri Ganganagar on December 1, 1984. He along with Bhagat Ram Nagpal, on Luna moped, was going to village Nathawala side on Ganganagar-Hanumangarh State Highway on the left side of the road and when their Luna reached near the rubber factory, a bus No. RSG 6222 came from behind and dashed against the Luna, due to which Bhagat Ram Nagpal and Dr. Vinod Kumar Behal fell down and bus, after crushing them, collided with an electric pole and, thereafter, went in a ditch and stopped there. The bus also hit a rickshaw. On account of this accident, Dr. Vinod Kumar

Behal died on the spot. Anju Behal, the widow of the deceased, on her behalf and on behalf of her two daughters, viz., Kumari Rubbal and Kumari Soniya, filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939 in the Motor Accidents Claims Tribunal, Sri Ganganagar and this claim petition was registered as Claim Petition No. 21 of 1985. In this claim petition, they claimed compensation amounting to a sum of Rs. 16,59,802.50. Rs. 9,59,802.50 were claimed on account of loss of wages and an amount of Rs. 5,00,000/- was claimed on account of loss of pension and other service benefits receivable after retirement and Rs. 2,00,000/- were claimed on account of deprivation of love, estate, protection, consortium etc. Ramesh Rani, the mother of deceased Dr. Vinod Kumar Behal, also filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939 for the grant of compensation amounting to Rs. 16,59,802.50. Rs. 9,59,802.50 were claimed on account of loss of wages and an amount of Rs. 5,00,000/- was claimed on account of loss of pension and other service benefits receivable after retirement and Rs. 2,00,000/- were claimed on account of loss of love, estate, protection, mental agony etc. The learned Judge of the Tribunal, after trial, awarded compensation to the tune of Rs. 3,84,000/- on account of loss of wages and he also awarded Rs. 5,000/- on account of loss of love, affection etc. He thus allowed the claim petitions for a sum of Rs. 3,89,000/- and rejected the claim of the claimants on other counts. After determining the total compensation, the learned Judge of the Tribunal apportioned the amount of compensation between the two sets of claimants. He awarded Rs. 19,000/- to Ramesh Rani, the mother of the deceased and awarded Rs. 3,70,000/- to Anju Behal, the widow of the deceased Dr. Vinod Kumar Behal and her children. It is against this judgment dated December 7, 1988, that both these appeals have been filed by the appellants.

3. Heard learned Counsel for the parties.

4. It is contended by the learned Counsel for the appellants, Anju Behal and her two daughters, that the amount of compensation awarded by the learned Judge of the Tribunal is unjust and inadequate and the learned Judge of the Tribunal, while determining the compensation, applied a wrong multiplier and the compensation awarded by the Tribunal, looking to the facts and circumstances of the case, is much on the lower side. His further contention is that the award of Rs. 5,000/- towards deprivation of love and affection, mental agony, loss to the estate and consortium is much on the lower side. The last contention raised by the learned Counsel for the appellants is that the learned Judge of the Tribunal awarded interest at the rate of 6 per cent per annum only, while the applicants should have been granted interest on the amount of compensation awarded atleast at the rate of 18 per cent per annum. The learned Counsel for the appellant Ramesh Rani adopted the same arguments raised by Anju Behal, but she raised one additional argument that the appellant being the mother of the deceased Dr. Vinod Kumar Behal, was entitled for equal share from the compensation and the learned lower court committed an error in awarding Rs. 19,000/- to her while apportioning the amount of compensation. The learned

Counsel for the Rajasthan State Road Transport Corporation, on the other hand, has submitted that the compensation awarded by the learned lower court is just and proper and needs no enhancement. According to him, a proper multiplier has been adopted in the present case in determining the amount of compensation. Lastly, it is submitted by him that the mother of the deceased, not being the dependant of the deceased Dr. Vinod Kumar Behal, is not entitled for any apportionment in the amount of compensation and what has been awarded to her is a large amount and she is not entitled for any further amount of compensation.

5. I have considered the rival submissions made by the learned Counsel for the parties.

6. One important fact, which the court should bear in mind while determining the compensation u/s 110-B (Section 168 of the New Act) is that it is a just compensation which is required to be awarded and, therefore, no method of calculation of the compensation would be justified if it does not result in awarding the amount of compensation which is not just looking to the facts and circumstances of the case. The courts in India have approved and adopted the multiplier method suggested by Viscount Simon in *Nance v. British Columbia Electric Railway Company Limited* 1951 AC 601 and by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601. According to this method, for assessing the damages and calculating the just compensation the annual dependency of the dependants should be determined in terms of annual loss accruing to the dependants due to the abrupt termination of the life of the deceased and for this purpose, the annual earning of the deceased at the time of the accident should be determined first and from this annual earning of the deceased, the amount which he was spending on him only be deducted, which, after deduction, gives the annual financial dependency of the dependants. This basic figure thus arrived at shall then be multiplied by a suitable multiplier. Now, so far as the annual earning of the deceased Dr. Vinod Kumar Behal in the present case is concerned, it is not in dispute. He, at the relevant time, was drawing the salary of Rs. 3015.35 per month. Anju Behal, PW 1, in her statement, has stated that her husband was getting the pay of Rs. 3015.35 per month and was spending Rs. 2,000/- per month for household expenses. From the statement of PW 1, Anju Behal, which has been relied upon by the learned Judge of the Tribunal, it is clear that the dependency of the dependants of the deceased in the present case was Rs. 2,000/- per month. The learned Judge of the Tribunal, in determining the basic figure as Rs. 2,000/- per month for calculating the dependency has thus not committed any mistake.

7. When once the basic figure for calculating the dependency has been arrived at, then the question remains what should be the multiplier which should be applied in the present case. If we look to the various decisions pronounced by the English courts then it appears that the English courts have applied the years of purchase, i.e., the multiplier ranging from 12 to 18 years, while by the

Hon"ble Supreme Court of India, the multiplier has been adopted ranging between 8 to 20 years of purchase. The Rajasthan High Court has applied the multiplier ranging between 8 to 35 years" purchase. In a recent decision, Milap Chandra, J., in a case where the deceased was 45 years of age, has applied the multiplier of 25 years. The longer multiplier has been applied by this Court looking to the life expectancy, which has been raised upto 70 years. In the present case, the deceased, at the time of his death, was 34 years 8 months old. If he would have remained alive, he would have served for another 23 years 4 months and after retirement he would have earned pension etc. also. According to the statements of the witnesses produced by the claimants, the average life in the family of the deceased is not less than 70 years. The father of the deceased is still alive and is more than 63 years of age. The mother of the deceased is also alive who is about 60 years of age. The grandmother of the deceased died after attaining 100 years of age. The average age in the family of the deceased, thus, can be ascertained at 70 years. The deceased being a doctor would have worked upto 70 years. The learned Judge of the Tribunal while calculating the compensation did not take into consideration the chances of promotions, the increase in the pay, the earnings by private practice by the deceased and other relevant factors. Looking to all these facts and circumstances of the case, I think that in the present case, multiplier of 25 (twenty-five) years" purchase would be an appropriate multiplier. The multiplier has been applied by me because had the deceased been alive, he would have served the State Government for another 23 years 4 months and would have earned promotions and increase in the salary on account of increments and fixation benefits etc. He would have also earned something by private practice. In this view of the matter, for the present case, the multiplier of 25 years" purchase, in my view, is just and more appropriate. If we apply the multiplier of 25 years" purchase to the basic figure for calculating the dependency of the dependants of the deceased then the amount of compensation comes to Rs. 6,00,000/-.

8. Now comes the question regarding grant of amount -of consortium, mental agony, deprivation of love and affection and other like factors. The learned lower court granted only Rs. 5,000/- on this count. The lady Anju Behal, being 29 years of age and having lost the company of her husband, has to spend the widowed life for the remaining period of her life; her two children have also lost their father and his love, affection and protection and, therefore, in my view, the award of Rs. 5,000/- on this count by the Tribunal is most inadequate. I, therefore, enhance this amount from Rs. 5,000/- to Rs. 20,000/- and award it.

9. Now comes the question regarding grant of interest. In view of the judgments of the Hon"ble Supreme Court in the cases of *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, , *Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others*, and *Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others*, the claimants-appellants are entitled to interest on the whole amount from the date of the claim petitions till the date of recovery at the rate of 12 per cent per annum.

10. The last point which requires consideration is regarding apportionment of this amount of compensation between the two sets of the claimants. The case of mother Ramesh Rani is that she being the mother of the deceased Dr. Vinod Kumar Behal, is entitled for 1/4th share in the total amount of compensation. According to Section 110-A (Section 166 of new Act), an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 of the Act may be made by all or any of the legal representatives of the deceased or by any agent duly authorised by any of the legal representatives of the deceased. The Motor Vehicles Act does not specify as to who is to be treated as the legal representative(s) for the purpose of Section 110-A. But who is the legal representative for the purpose of Section 110-A, in this regard, guidance can be taken from Section 2^~--- ALL ---~^ of the CPC as well as from the Hindu Succession Act and in my view, the term "legal representative" in Section 110A includes the mother of the deceased also, as she is a Class "A" heir as per the Hindu Succession Act along with the son, daughter, widow and other heirs mentioned in the Schedule. The mother is also, therefore, entitled for apportionment of the compensation. But under the Motor Vehicles Act, every legal representative who suffered on account of death of a person due to motor vehicle accident has a remedy for realisation of the compensation that is provided by Section 110-A to Section 110-F of the Motor Vehicles Act, 1939. In determining the compensation as the deceased ceased to be productive, the court has to value the chance that a particular claimant would have derived some financial benefit from the deceased had he remained alive. Thus, the dependency of the claimant on the deceased, apart from the legal representation, is a valid consideration for the grant of compensation. Any person, though dependent on the deceased, is entitled to make an application for the grant of compensation provided he or she falls within the definition of the term "legal representative". In order to claim compensation or to come within the term "legal representative", one has to be a heir under the law applicable to the parties, who are Hindu in the present case. So far as the question of dependency is concerned, it should have a basis of rightful claim and the court has to consider that person claiming has a right to claim dependency, i.e., the right to claim for maintenance. Thus, it is the legal representative who is a rightful legal heir who depends upon the deceased is only entitled for the apportionment of the compensation in the case of a matter of accident claim. The mother of the deceased claiming apportionment of the amount of compensation has to establish the extent and the nature of dependency upon the deceased otherwise she is not entitled for any part of compensation. In the present case, the claimant Ramesh Rani failed to show that she was, in any way, dependent upon her son Dr. Vinod Kumar Behal. She, in her statement, has stated that her husband is alive who is a liquor contractor and is still working as such. The claimant, before the grant of compensation in his/her favour, has to show the reasonable expectation of pecuniary benefit from the continuance of the life of the deceased and not merely a speculative possibility of pecuniary benefit. Since the appellant Ramesh Rani was not dependent on the deceased Dr. Vinod Kumar

Behal and as such she is not entitled for any compensation as nothing can be paid by way of solatium or sentimental damages and the basis for the determination and grant of compensation to the legal representatives of the deceased is the pecuniary loss suffered by the dependants as a result of the death of deceased. Ramesh Rani is, therefore, not entitled to any compensation for the loss to the dependency but she is entitled for compensation on the ground of mental shock due to untimely death of her son and also due to loss of love and affection and the old-age services by the deceased and on this count, I think that she is entitled for apportionment of the compensation to the tune of Rs. 25,000/- (Rupees twenty-five thousand only). The learned Judge of the Tribunal awarded the compensation of Rs. 19,000/- to Ramesh Rani on this count, which I enhance to the tune of Rs. 25,000/-.

11. In the result, both the appeals filed by the appellants are allowed. The amount of compensation is enhanced from Rs. 3,89,000/- to Rs. 6,20,000/-. Out of this amount of Rs. 6,20,000/- Anju Behal and her daughters will get Rs. 5,95,000/- and the appellant Ramesh Rani will be entitled for a sum of Rs. 25,000/-. The appellants are also entitled for interest at the rate of 12 per cent per annum on this amount of Rs. 6,20,000/- from the date of claim petition till the date of recovery.