**(1975) 10 OHC CK 0004**

**In the Orissa High Court**

**Case No :** M.A. No. 89 of 1973

Apani Behera and Others — APPELLANT

Vs

Kedaroath Kar and Others — RESPONDENT

**Date of Decision :** 29-10-1975

**Acts Referred:**

**Citation :** (1977) ACJ 147

**Hon'ble Judges :** B.K. Ray, J

**Bench :** Single Bench

**Advocate :** R.C. Patnaik, for the Appellant; G.P. Mohanty and P. Roy, for the Respondent

**Final Decision :** Allowed

# Judgement

B.K. Ray, J.—The claimants are the Appellants in this appeal against the judgment of the Motor Accidents Claims Tribunal, Puri.

2. The case of the claimants before the tribunal is as follows: Bhaskar was collecting cheese from different places from Balipatna side and was bringing the same on his cycle for supplying to different confectioners in the New Capital, Bhubaneswar. His daily turnover was about 80 to 100 Kgs. of cheese and he was earning about Rs. 1,000/- per month from this business. On 27.4 71 he was coming on his cycle to the New Capital with cheese from Niali side on the left side of the road. The motor bus bearing ORP 1841 was going from the Capital side with a terrific speed being driven in a rash and negligent manner. The driver of the bus was then drunk. He neither blew the horn nor had control over the bus. The bus first ran over an old woman who was crushed to death. Thereafter, the motor vehicle dashed for the second time against Bhaskar and for the third time against one Sindhu Naga alias Behera. Even after the accident the vehicle did not stop at the stop but went ahead and then stopped at a distance as it was in a high speed. At the place of accident the width of the road was 32 feet and the same was free. Immediately after the accident the driver absconded. The accident was caused due to rashness and negligence of the driver driving the

vehicle at the relevant time. Bhaskar was severely injured by the accident and was taken to Balipatna Primary Health Centre for treatment. From there when he was being removed to the Capital hospital he died on the way as a result of the injuries sustained by him in the accident. His cycle was completely damaged. On these allegations the claimant Appellants who were dependants of Bhaskar claimed Rs. 49,600/- out of which Rs. 46,000/- was towards loss of future income of the deceased, Rs. 1,000/- towards funeral expenses, Rs. 2,000/- towards mental shock and pain, Rs. 400/- towards the price of cheese lost and Rs. 200/- towards the price of the cycle damaged

3. The owner of the vehicle challenged the claim of the claimants on the plea that at the time of accident the driver of the vehicle was driving it in a normal speed ; that there was no rashness or negligence on the part of the driver ; that Bhaskar and 10 to 12 others were coming on cycles carrying heavy load of cheese suspended on their respective cycles; that on account of heavy loads they were not able to keep balance ; that the road at the place of accident was 12 feet wide; that after seeing the cyclists the driver blew horn ; that as the cyclists were coming in the middle of the road in an unbalanced state Bhaskar could not go to the side; that on seeing this the driver applied brake and drove the vehicle to the left side of the road leaving the entire tarred portion of the road vacant for the cyclists ; that inspite of this, the cyclists dashed against one another and Bhaskar fell in front of the front wheel of the bus and that another cyclist, viz., Sindhu dashed against one of the two sides of the bus. The owner, therefore, claimed that the claimants were not entitled to any damages.

4. The insurer took the plea before the tribunal that the vehicle had not been insured on the date of the accident in the name of its owner. The manner in which the accident is alleged to have been caused by the claimants and the quantum of damages claimed by the claimants were also challenged by the insurer.

5. On the question as to whether the bus met with accident as a result of rash and negligent driving thereby causing the death of Bhaskar the tribunal has held in favour of the Appellants. This finding is not challenged before me. The finding of the tribunal that the Appellants are the dependants of Bhaskar and are entitled to claim damages is also not disputed. The finding of the tribunal that the Appellants are entitled to Rs. 16,000/- as damages is only challenged before me.

6. On the question of quantum the Appellants have mainly relied on the evidence of P.Ws. 3 and 4. P.W. 3 says that according to him Bhaskar used to supply him cheese worth 15 to 20 Kgs. per day. He was also supplying 15 to 20 Kgs, of cheese to other stores. His daily turnover was 50 to 60 Kgs. of cheese. In his cross-examination he has, however, admitted that he was maintaining accounts to show the supply. This account has not been produced. The other witness (P.W. 4) has said that Bhaskar used to supply to him 2 to 3 Kgs. of cheese per day and that his net profit in one kilograme of cheese was only 0.50 p. This witness has

 

also admitted that he has accounts to show the supply of cheese by Bhaskar to him. This account is also not produced. It is not disputed that Bhaskar met with the accident when he was bringing cheese for supply to different confectioners in the New Capital. In the absence of accounts maintained by P.Ws. 3 and 4 the tribunal has come to a finding that Bhaskar was supplying about 15 Kgs. of cheese per day and on the basis of the evidence of P.W. 4 it has further held that his net profit per day was Rs. 7.50. Deducting therefrom Rs. 2/- per day towards the personal expenses of Bhaskar the tribunal has held that Bhaskar was contributing Rs. 5/- per day for the maintenance of the claimants. Therefore, the monthly contribution to the dependants by Bhaskar has been assessed by the tribunal at Rs. 150/-. Bhaskar was aged 37 years at the time of his death. The tribunal has fixed the normal expectancy of life of Bhaskar at 55th year. It is this part of the finding which is seriously challenged by the Appellants. On the basis of this finding the tribunal has come to the conclusion that the dependants have been deprived of the contribution from Bhaskar for 18 years and calculating the contribution at the rate of Rs. 150/- per month the tribunal has held that if Bhaskar would have been alive till his 55th year he would have contributed Rs. 22,400/-, in all, for the maintenance of the dependants. Out of this, the tribunal has deducted Rs. 2,400/- for uncertainties of life and has further deducted l/6th of Rs. 22,400/- for lump sum payment. After making these deductions the tribunal has awarded a consolidated sum of Rs. 16,000/-as damages. It has disallowed the Appellants'' claim of Rs, 1,000/- towards Sudhi expenses on the ground that this part of the evidence of the claimants is not supported by any independent evidence. The tribunal has also disallowed the claim of Rs. 2,000/- for mental shock and pain in view of the fact that it has awarded a consolidated amount of Rs. 16,000/- as compensation. It has also rejected the claimants'' claim of Rs. 400/- for the price of cheese and Rs. 200/- for the cycle, there being no satisfactory evidence. The findings regarding Sudhi expenses, mental shock and Pain, damages for loss of cheese and cycle, according to me, have been correctly arrived at, there being no satisfactory evidence to support these claims. But with regard to the finding that the dependants have been deprived of the contribution from Bhaskar for 18 years it is contended by the learned Counsel for the Appellants that the normal expectancy of life of Bhaskar should have been fixed at 65th year and not at 55th year. Bhaskar was not a Government servant. Therefore, it would not be proper to say that he would have ceased to earn after his 55th year as happens in the case of Government servants who ordinarily reach the year of superannuation at the age of 55. Several decisions have been cited before me by the learned Counsel for the Appellants to show that normally the life expectancy of a man in India has been taken to be 65th year. On the other hand, learned Counsel for the Respondents invites my attention to some decisions under which the normal expectancy of life has been taken to be 55th year. Some of these decisions relate to the cases of deaths of Government servants in accident. These decisions, therefore, cannot be taken to be the basis for calculation of the normal expectancy of life of a man. As I have already pointed out, Bhaskar was not a Government servant and so, there would be no occasion for him to reach the age of superannuation. There is no evidence that he was suffering from any disease. On the other hand, the evidence is that he was an able-bodied man with a sound physique. That being so, normally one would expect him to live at least tip ot 60th year. Therefore, it must be held that the Appellants have been deprived of contribution from Bhaskar for 23 years. At the rate of Rs. 150/- per month the annual contribution comes to Rs. 1,800/-. The loss of income for 23 years comes to Rs. 41,400/-. Deducting therefrom l/6th of the amount for lump sum payment the Appellants will be entitled to Rs. 34,000/-.

6. I, therefore, allow the appeal in part, modify the award of the tribunal and direct that the Appellants shall recover Rs. 34,000/- as compensation from the insurer together with interest on the aforesaid amount at the rate of 6% per annum from 23.6.71 till the date of payment. There will be no order for costs.

 