

(1972) 01 CAL CK 0006
In the Calcutta High Court
Case No : A.F.O.O. No. 681 of 1967

Bedana Bala Dassi and Others

APPELLANT

Vs

Calcutta State Transport Corporation

RESPONDENT

Date of Decision : 31-01-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1972 Cal 305

Hon'ble Judges : M.M. Dutt, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : B.P. Chatterjee, for the Appellant; Somen Ch. Bose and Sundarananda Pal, for the Respondent

Final Decision : Allowed

Judgement

Arun K. Mukherjea, J.—This appeal is directed against an order of the Motor Accident Claims Tribunal. The short facts of the case are as follows: One Gopinath Dcy died as a result of a motor accident on 5th March, 1964 at about 2 P.M. The accident took place near the junction of Upper Circular Road and Raja Rammohan Roy Road. It is an admitted fact that Gopinath was knocked down by State Bus No. WBS 1735. The widow and the children of Gopinath filed an application for compensation before the Tribunal. They alleged that the accident was due to the negligence of the driver of the aforesaid bus. The claimants claimed further that the income of Gopinath at the time of his death was about Rs. 100/-per month and that his age was 36 years at the time of death. The claimants claimed a sum of Rs. 10,000/-. Some evidence was adduced on behalf of the claimants regarding the circumstances in which Gopinath was knocked down by the State Bus. The opposite party Calcutta State Transport Corporation did not adduce any evidence though they sought to make out a case that Gopinath was overrun because of his own negligence. The learned Tribunal came to a finding on facts that Gopinath was really run over because of the negligence of the driver of the State Bus. On this basis the Tribunal held that the petitioners

were entitled to compensation. The present appeal is directed against the sum assessed by the Tribunal for compensation.

2. It appears that the Tribunal assessed the compensation in the following manner: In the first instance the Tribunal estimated the net annual loss suffered by the legal representatives of the deceased. Following a decision in AIR 1960 Punj 300 the Tribunal held that the net compensation to be awarded to the petitioners should be 15 times the net annual loss suffered by them on account of the death of the deceased. Since the Tribunal had found on facts that the income that Gopinath would handover to his family for maintaining them amounted to Rs. 40/-per month, the Tribunal computed the net compensation to be Rs. 7,200/-. After coming to this finding the Tribunal made certain deductions which we find very difficult to appreciate. The first deduction that the Tribunal made was on account of what the Tribunal described as benefit derived by the petitioners from the death of Gopinath. According to the Tribunal the fact that after Gopinath's death his widow and children would have an undivided share in their native house at Joynagar amounted to a definite gain on their part by Gopinath's death. The Tribunal took twenty years rent for this accommodation as the capitalised value of these rooms and deducted a sum of Rs. 1700/-from the net compensation to be given to the petitioners. The Tribunal, however, allowed Rs. 200/- to be deducted from this sum as depreciation and cost of annual repairs. On this basis the Tribunal calculated that the petitioners had obtained an inheritance worth Rs. 1500/-. This was deducted from Rs. 7200/-. The Tribunal made a further deduction of Rs. 500/-which, the Tribunal assumed, was to be given to the heirs of Gopinath out of a fine of Rs. 1000/- that had been imposed in a criminal case upon the driver of the bus. These two deductions leave a total sum of Rs. 5200/-. The Tribunal does not, however, stop here. The Tribunal again calculated that since this sum would be invested by the heirs and would yield some profit to the heirs, there should be a further deduction of ten per cent. This gives the final figure of Rs. 4680/- which, according to the Tribunal, shall be an adequate compensation in this particular case.

3. We have carefully considered the Tribunal's method of calculation and to say the least, we find ourselves more than puzzled by the logic adopted by the Tribunal in making the deductions. To say that when a person dies his family makes a gain by reason of the fact that the dwelling house or the house which belonged to the family before, becomes the exclusive property of the heirs to the exclusion of the deceased person is a fantastic consideration. Even the learned Advocate on behalf of the respondent did not want to justify this deduction. As for the second deduction, namely, Rs. 500/- on account of the sum that was expected to be given to the petitioners out of the fine imposed in a criminal case, an affidavit has been filed in this case that no such fine has been realised. Therefore, this deduction is also unjustified. The last and final deduction by reducing the balance amount of compensation by ten per cent on the ground that the sum would be in- vested shows that the learned Judge entirely lost sight of the purpose of the compensation. The compensation is provided to replace the

money that the heirs of the deceased used to receive by way of maintenance. The compensation is not in the form of a monthly allowance. It is in the form of a lump sum. For the sake of convenience the monthly allowance of Rs. 40/- has been converted into a capitalized value and the net compensation on this basis has been fixed at Rs. 7200/-. If the net allowance be again reduced by the income that may accrue from the capitalised amount, it is difficult to understand how the balance sum will yield the monthly maintenance which it is theoretically supposed to bring to the petitioners. In any event, to imagine that an investment would yield a steady profit of ten percent and to reduce the compensation by ten per cent is, in our opinion, little short of speculation. We have no manner of doubt that the deductions made by the learned Tribunal are thoroughly unwarranted.

4. In this view of the matter we allow the appeal and set aside the order of the Motor Accident Claims Tribunal. The petitioners should get an award of Rs. 7,200/- against the opposite party without any deduction whatsoever. The opposite party is directed to pay the aforesaid sum within three months from date. If, however, some amount have already been taken away by the appellants that amount should be adjusted against the sum of Rs. 7,200/-. The appellants shall get the costs of the appeal as well as the costs before the Tribunal.

M.M. Dutt, J.

5. I agree. Appeal allowed.