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(1983) 02 PAT CK 0035

In the Patna High Court

Bihar State Road Transport Corporation and Others — APPELLANT

Vs

Chandreshwar Mishra and Others — RESPONDENT

Date of Decision : 08-02-1983

Acts Referred:
Hindu Succession Act, 1956 — Section 15, 16

Citation : (1984) 2 ACC 53 : (1983) ACJ 631 : (1983) PLJR 373

Hon'ble Judges : S.K. Choudhuri, J;Ramnandan Prasad, J

Bench : Division Bench

Judgement

Ramnandan Prasad, J.—This appeal has been filed by the opposite parties of claim case No. 38 of 1977, 2 of 1979 under the provisions of Section 110-D of the Motor Vehicles Act against the judgment and award dated 12-7-80 given by Sri Chandra Shekhar Singh, District Judge of Vaishali, acting as Motor Vehicle Accidents Claims Tribunal. The amount of compensation allowed by the Tribunal is Rs. two lacs in all besides costs of Rs. 500/- payable by the opposite parties-appellants to the claimants-respondents.

2. Respondent No. 2 is the minor son of respondent No. 2(?) who was the husband of the deceased, Smt. Uma Singh. Their case was that the deceased, Smt. Uma Singh, who was a lecturer in political science in Ram Sewak Mahila College, Sitamarhi, had come to her father''s place at Patna and was returning there on 9-9-1977. She crossed the Ganges at Patna by steamer. At Pahlezaghat she boarded a non-stop Rajya Transport bus bearing no BHF 388, which was running from Siwan to Sitamarhi, at about 11.30 a.m. After seeing her off there, her husband left for Muzaffar-pur by train for some other work. When the bus was about one or two kilo metres away from Goraul its left front tyre burst and the bus dashed against a neem tree after skidding about 22 yards as a result of which the bus got very badly damaged and its driver and conductor died at their seats. Two children and one lady who were co-passengers of this bus also died at the spot while many other passengers of the bus got badly injured. One of the badly injured persons was Smt. Uma Singh. Some local persons including one

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Deputy Magistrate (A.W.7), who happened to be there at that time, took her and other injured persons to the Goraul Hospital but she was declared dead there.

3. A fardbeyan about this accidents was recorded by the police officer of Goraul police station on the same day at 2.30 hours on the statement of A.W. 9, Dev Narain Mahto, who was also one of the passengers, of the ill-fated bus and sustained injuries in that accident. The police registered a case and, after holding inquest on the deadbodies, got the post mortem examinations conducted and also got bus in question examined by the Motor Vehicle Inspector (A.W. 10) on 16-12-1977.

4. The two claimants instituted claim case No. 38 of 1977, 2 of 1979, before the Motor Vehicles Claims Tribunal on 21-7-1977. The total amount claimed by them was Rs. 2,51,000/-.

5. It was alleged by the claimants that the deceased was employed as a lecturer in an affiliated college and was initially in the scale of Rs. 400-800 only. Her pay scale was, however, revised to Rs. 700/- to 1,600/- from the date of concurrence given by the University Service Commission to her appointment as a temporary lecturer i.e. with effect from 22-5-1976. According to them she was about 30 years old at the time of accident and was expected to serve 30 years more in the college. Indeed her life expectancy was more than that. It was also alleged that the accident took place due to bad maintenance of the bus in question and also due to the rash and negligent driving by the driver of the bus. In this connection it was stated that the tyre which got burst was of sub-standard quality and at the relevant time the bus was being driven recklessly at a very high speed of 70/80 miles per hour.

6. The opposite parties resisted the claim of the claimants by filing a written statement. Their case, inter alia, was that the bus was a new bus and the tyre in question was also a new one. It was denied that the tyre was of sub-standard quality or that the bus was not properly maintained. It was also denied that the bus was being driven at a very high speed, rather it was being driven at a speed not exceeding 40 kms. per hour. It was asserted that the driver was very competent, sober and careful and he was driving the bus very carefully and cautiously. According to them, the accident could not be averted by human beings as it was caused by bursting of the left front tyre. The driver lost control of the bus because of the bursting of the tyre and eventually the bus dashed against a tree. They also stated that claim put forward by the claimants was highly excessive.

7. The learned Claims Tribunal framed a number of issues and answered all of them in favour of the claimants. He found that the tyre which got burst was of sub-standard quality and further that the bus was being driven rashly and negligently by the driver. In this connection his finding was that the bus was being driven at a very high speed and this was the reason of the heavy impact caused on it by the dash against the tree which turned the bus into shambles.

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Regarding the quantum of compensation, he found the claim for a sum of Rs. 2,07,000/- on account of loss of income to the claimants for a period of 30 years was justified. In doing so he calculated her average income at Rs. 1,150/- per month for a total period of 30 years i.e. till the age of her retirement at 60 years taking into account the revised pay scale of Rs. 700-1600/- and after reducing the total amount thus arrived by 50% on account of personal expenses and maintenance. Then, he also allowed a sum of Rs. 10,000/- as against 20,000/- claimed by the claimants, for the loss of association, teaching, coaching etc. Similarly, he allowed a claim of Rs. 10,000/- for employing a tutor for claimant No. 2 for about 20 years as against a total claim of Rs. 18,000/- but forward by the claimants. In this way he came to the conclusion that the claim of the claimants for a total sum of Rs. 2,07,000/- was justified but he reduced this amount by 10% on account of uncertainties of life and the lump sum payment (6% and 4% respectively). Ultimately he pame to the conclusion that the claim of the claimants justified to the extent of Rs. 2,04,300/- but, in order to round it off, he allowed claim for a sum of Rs. 2 lacs only besides Rs. 500/- as costs.

8. The opposite parties preferred this appeal against aforesaid award of the Claims Tribunal. Mr. K.P. Verma, learned Advocate General, who appeared on behalf of the appellants, made two submissions before us in support of the appeal. His first submission was that there was no evidence on the record to prove that the tyre in question was of sub-standard quality or that the bus was not properly maintained. His second submission was that there was no reliable evidence on the record to show that the bus was being driven rashly or negligently. He also submitted that the claim allowed was highly excessive.

9. There appears some force in the contention of the learned Counsel for the appellants that the claimants have failed to prove that the bus was not properly maintained or that the tyre in question was of sub-standard quality. Indeed, the learned Claims Tribunal has also not recorded a clear finding that the bus in question was not properly maintained. On the other hand, there is evidence on the record to show that it was more or less a new bus. The learned Claims Tribunal was, however, of the view, that the tyre which got burst was of sub-standard quality and the Rajya Transport should not have used such a tyre. For arriving at this finding, he has placed reliance on the evidence of the Motor Vehicles Inspector (A W. 10). The witness has, no doubt stated in his examination-in-chief that this tyre which was of Modi Continental Heavy Duty 900 X 200 was really of only 8 ply whereas a tyre of not less than 12 ply should be used in a bus. In this view of the matter, he opined that the tyre was of substandard quality. He, however, admitted in cross-examination that for coming to a definite conclusion regarding the number of ply it was necessary to cut the tyre. His evidence however, does not show that he had cut the tyre for determining this fact. On the other hand his evidence in examination-in-chief itself shows that he was not definite that the tyre was of 8 ply only as he was simply stated that it looked like that to him, indicating thereby that he had not examined it closely. So, his evidence is more based on first impression than on

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any scientific investigation. It may be stated here that the tyre was a new tyre and ''12 ply'' was embossed on it. It is difficult to hold in the absence of any conclusive evidence that a company like Modi Continental would make a wrong statement on the tyre that it was of 12 ply when it was really of 8 ply only. In such circumstances it is difficult to hold that the claimants have succeeded in proving beyond doubt that the tyre in question was of sub-standard quality.

10. In spite of the above finding, the respondents cannot escape liability if the bus was being driven rashly and negligently by the driver as found by the learned Claims Tribunal and, in my opinion this finding is unassailable. The witness who have deposed on this point are A. Ws. 2, 3, 7, 8 and 9 besides A.W. 1 who is a hearsay witness. Out of them, A.W. 8, Ehtram Ali Khan and A. W. 9, Deo Narain Mahto, are the co-passengers of the bus. The former is a tracker in the Irrigation Department and the latter a Junior Engineer in the Electricity Department. Both of them have stated in clear words that the driver started driving the bus at a very high speed and in a rash manner after he left Hajipur. The evidence of AW. 8 is that at the relevant time the bus was being driven at a speed of 70 to 75 Kms. per hour. He has further stated that many passengers of the bus had told the driver as to why he was driving the bus so recklessly. Similar is the statement of A.W. 9. He himself was one of those passengers who had asked the driver not to drive the vehicle so fast but the driver did not pay any heed to them, rather he replied to them that he had to return also whereas the passengers had simply to go to their respective homes.

11. The most important and independent witness on the point is A.W. 7, Anjum Parvez, who was then posted as a Deputy Collector at Hajipur and was going to Goraul on a jeep at the relevant time. His evidence is that when his jeep was 2-3 kms. ahead of Bhagwanpur he saw the said bus coming from behind. On seeing this bus, the driver of the jeep also started driving fast so that the bus could not over-take his jeep as the bus was being driven very fast and the bus driver was making regular attempts to over-take it. Ultimately, the bus over-take the jeep and at that time its speed would not be less than 65-70 kms. per hour. His evidence in this regard cannot be lightly treated as he was on a jeep which must have a speedo-metre and, as admitted by him, has jeep was running at a very high speed but still the bus succeeded in overtaking it. Not only that, the bus became out of sight after over-taking it and only a few minutes thereafter it dashed against a tree.

12. A. Ws. 2 and 3 are the residents of nearby village who had gone to Sarai on a cycle and were returning towards Goraul at the relevant time. A.W. 2 has stated that the bus had over-taken them at such a high speed that they were terrified. A.W. 3 has stated that he went to the left edge of the road out of fear when he saw the bus going at such a high speed. Soon after they found that the bus dashed against a tree.

13. The evidence of the aforsaid five witnesses taken together go to show that the bus was being driven at a very high speed at the relevant time. The speed

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was so high and it was being driven so recklessly that not only the passengers inside the bus were terrified but others moving on the road also got terrified. Indeed, the bus passengers objected to such a high speed and asked the driver not to drive at that speed and in that manner but he did not listen to them on the plea that he had to return on the same day. The Motor Vehicles Inspector (A.W. 10) has stated that, after examining the bus at the site of the accident, he felt that the speed of the bus at the relevant time would by 75 to 80 kms. per hour. Indeed, this is a case in which the accident speaks for itself and the principle of res ipsa loquitur would apply with full force. The evidence of the Motor Vehicles Inspector shows that the bus was completely smashed as a result of the accident. Both its front chassis had become damaged and two rear chassis had become bended. The front stub axle had got broken and many other parts were also very badly damaged as stated by him. This witness further stated that the bus was lying fallen in a ditch be the side of the road. Then, the evidence of the Investigating Officer (A. W. 4) is that he had found skid mark 22 yards long on the pitched portion of the road. Of course, he could not mark the skid mark on the kuchha portion of the road where the bus dashed against the tree as such marks should not be visible on such road All these materials and circumstances go to show that the bus had dashed against the tree very violently as a result of which it got badly smashed and five passengers including the driver and the conductor lost their lives almost instantaneously and 30 to 35 persons sustained some injuries. Such a violent dash against the tree could not have been possible had not the bus being driven very rashly and negligently. The fact that the bus skidded of more than 22 yards after the bursting of the tyre also indicates that the bus was being driven at a very high speed and further that the driver had lost control over it. It may be pointed out here that the road was pitched and was sufficiently wide with flanks on both sides at the place, in such circumstances I feel inclined to agree with the learned Claims Tribunal that the accident speaks for itself and it is obvious from the nature of the accident that the bus was being driven at such a high speed and in such a reckless manner that the driver had lost control over it. The result was that he could not stop the vehicle when one of the tyres burst and consequently the bus skidded to distance of over 22 yards and finally dashed against a tree and fell down into a ditch. Even the driver could not manage to get away and died in the bus itself.

14. In such circumstances, it can well be said that the claimants have succeeded in proving that the bus was being driven rashly and negligently. At any rate, it cannot be disputed that they have discharged their preliminary onus of proving the negligence of the bus driver and as such the onus would shift on the appellants to establish that the accident happened due to some other cause and not due to the negligence of the driver. The appeal lants have, however, failed to discharge this onus. No doubt, they have examined three witnesses who have stated the bus was being driven at a speed of 30-35 kms. per hour but it is not possible to accept their evidence in view of the evidence of the aforesaid witnesses examined by the claimants and the circumstances pointed out above.

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Out of them, R.W. 2 was the Khalasi of the bus and he was naturally interested in supporting the case of the respondents. Indeed, all these three witnesses had themselves received injuries in the said accident which may indicate the nature of the accident. It is obvious that such an accident could not be possible but for the rash and negligent driving by the driver.

15. It was submitted by the learned Advocate General that it cannot be believed that the bus was being driven at a high speed of 65-70 kms. per hour as the bus is said to have left Pahlezaghat at 11.30 a.m. and to have met with the accident at about 1.30 p.m. So according to him, the bus covered a distance of about 34 kms. only in about two hours time and this would show that the bus was being driven at a very controlled speed. Prima facie, this submission appears to be attractive but it cannot stand close scrutiny. It is to be noted that the bus had stopped at Hajipur for about 10 to 15 minutes. Then, it is the positive evidence of A.W. 9 that the driver had started driving the bus rashly only from Hajipur. At any rate, what is of prime importance is the manner is which the bus was being driven at the time of accident and, as said above, there is enough evidence to show that the bus was being driven at a very high speed and in a reckless manner at the time of the accident.

16. On a careful consideration of the entire evidence and the circumstances of the case, I feel inclined to hold that the witnesses examined by the claimants have told the truth and are much more reliable than those examined by the respondents. Relying on the evidence of A. Ws . 2, 3, 7, 8, 9 and 10 and the circumstances mentioned above, I hold that the accident took place due to rash and negligent driving of the bus by its driver and that being so, the owner of the bus, namely, appellant No. 1, must be held liable to compensate the claimants for the death of Smt. Uma Singh.

17. Now coming to the quantum of compensation payable to the claimants, I find that the learned Claims Tribunal has allowed a claim of Rs. 2 lacs to them. The learned Advocate General has challenged this amount as highly excessive. His submission is that the learned Claims Tribunal has adopted an outdated method of determining the claim by multiplying the financial dependency with thirty years for which period Smt. Uma Singh was expected to serve as a lecturer in the said college. His submission was that the multiplier principle is now being considered as the most reasonable and equi-table principle for determining the quantum of compensation and in support thereof he referred to a Division Bench decision of Punjab and Haryana High Court in the case Asha Rani and Others Vs. Union of India, .

18. This decision is based on the Full Bench decision given by five judges of Punjab and Haryana High Court in the case of Lachhman Singh and Others Vs. Gurmit Kaur and Others, . In the Division Bench case S.S. Sandhawalia, C.J. interpreted the dicision given in the Full Bench case and observed as follows (at para 11):

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In the light of the above, what deserves highlighting is the fact that the Full Bench in turn rejected the method of determining compensation by multiplying the annual financial dependency with the remaining years of life expectancy. It is manifest that in this method once the annual financial dependency, had been determined the age of the deceased was a paramount factor. For instance as the normal expectancy of life in the region has been held to be 70 years then it would follow that if the deceased person was of 20 years of age the annual financial dependency was to be multiplied 50 times. On the other hand, if the deceased was of 60 years then the figure would be only the remaining 10 years. Consequently the age of the deceased in this method was a paramount if not a conclusive consideration, The Full Bench expressly rejected this method as unreasonable and unrealistic. Therefore in a way the paramountcy or unconclusiveness of age for the determination of compensation stands already authoritatively negatived.

In Lachhman Singh and Others Vs. Gurmit Kaur and Others, the ratio proceeds on the basic hypothesis that the law provides primarily for the pecuniary loss caused to the dependants and solatium was alien to the concept of compensation in this context. The whole object therefore, is to give the dependants an equivalent financial support for the remaining years which the deceased was providing to them at the time of the accident taking into consideration various imponderables in an individual case but matters which were totally conjectural and hypothetical. For instance the slippery factor of inflation matched by rising ''bank interest rates'' was ruled out of them. The primary purpose herein is to give the dependants a consolidated fund of money which would continue to yield annual financial support which the deceased was providing to his dependants. Once that basic object is achieved the age of the deceased ceases to have relevance except in one instance. This is where the remaining life expectancy is lesser than the multiplier sought to be applied. This may be highlighted by an extreme example. In a case where a deceased would be 69 years of age and the life expectancy is pegged at 70 years then obviously a multiplier above one would be uncalled for. Similarly where the age of the victim of the accident is 60 years the maximum multiplier cannot go beyond 10, subject of course, to reduction in view of any other factors. In cases where this limitation does not come in, the age of the deceased person ceases to be of any relevance. It is not that the compensation for a man dying at 20 (all other things being equal) has necessarily to be double or higher than the one killed at the age of 40. This is so because the consolidated sum of money given as compensation to the dependants is an impersonal fund of money which will continue to yield an income equivalent to the annual financial decency there-after irrespective of the age of the deceased. Indeed the assumption is that this amount would guarantee the availability of an equivalent annual financial income for the rest of the time thereafter.

19. Ultimately, it was concluded that the age of the deceased person is neither a conclusive nor a paramount factor in the determination of the compensation

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except in those cases where the remaining years of life expectancy are less than multiplier which is sought to be appllied. It appears from this judgment that their Lordships of the Supreme Court had approvingly referred to the English cases and followed the principle spelt out therein (as has been done by the Full Bench) in Gobald Motor Service Ltd. v. R. M. K. Veluswami 1958 65 A.C.J. 179 (S.C.) and Municipal Corporation of Delhi Vs. Subhagwanti and Others, .

20. The Gujarat High Court also seems to have given a go-bye to the said system of multiplying the annual financial dependency by the number of years by which the life has been cut short and accepted the multiplier system as has been done by the Punjab and Haryana High Court. In this connection reference may be made to Division-Bench decisions of that High Court in the cases of Ahmedabad Municipal Corporation and Another Vs. Aminabibi and Others, and Ranchhodbhai Somabhai and Another Vs. Babubhai Bhailalbhai and Others, . In the latter case also the multiplication of 16 was held to be just, reasonable and proper.

21. On a consideration of all aspects of the matter, I feel inclined to accept the views of these two High Courts in these decisions. Even the English Courts have accepted this principle. I, accordingly, hold that the multiplier principle of determining the quantum of compensation appears to be more sound and equitable. The purpose of awarding compensation to the dependants is fully achieved by this system and it appears equitable to the claimants and the person liable to pay the compensation. I also feel inclined to agree with the views of these High Courts that the normal multiplier should be 16 and it may rise to a maximum of 20 in suitable case.

22. In the next place it was submitted by the learned Advocate General that the deceased was a temporary lecturer in the pay scale of 400-800 only and, so, the Claims Tribunal was unjustified in calculating her average income at Rs. 1,150/- per month after taking into account the revised pay scale of Rs. 700-1600. But, the letter of the Finance Officer of the Bihar University (Ext. 4/a) read with the letter of the Principal of Ramsewak Singh Mahila College Ext. 4) clearly shows that the deceased was placed in the pay scale of Rs. 700-1600 with effect from 22-5-76 and was getting Rs. 700/- at the tiime of her death. It also appears from this letter that the Government had taken a policy decision to regularise the services of temporary college teachers and in all probability the deceased would also have been absorbed as a permanent lecturer. That being so, the learned Claims Tribunal was justified in fixing the average monthly income of the deceased at Rs. 1,150/- taking into consideration that she had 30 years more to serve. The views of the learned Advocate General that she was a temporary lecturer and as such her future prospect could not be taken into consideration cannot be accepted in view of the decision of Supreme Court in the case of Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, . In this case it has been clearly held that the Claims Tribunal has to take into account the salary of the deceased which he would have received while reaching the maximum of the grade as also the age at which he would have reached the maximum. In that

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case also the claim was being resisted on the ground that the deceased was a temporary employee but the Supreme Court did not accept the plea and held that:

This is, however, not a consideration which could have weighed with the Claims Tribunal in making the assessment, because it was purely contingent. On the other hand, with the rise in price index it could well have been expected that there would be several revision in the grade by the time the deceased Raha had attained the age of superannuation, which, if taken into account, would further enhance the amount.

23. Relying on the aforesaid decision, I hold that the learned Claims Tribunal was quite justified in calculating the average of the deceased at Rs. 1,150/- per month considering the pay scale in which she was placed with effect from 22-5-76 but, as said above, his method of determining the compensation by multiplying the annual financial depency with the number of years by which the life has been cut short is out-dated and unreasonable. As held above, the multiplier principle is more sound and equitable and further that multiplier of 16 should normally be applied. In this view of the matter, the amount of compensation awarded by the learned Claims Tribunal has got to be modified in accordance with this principle.

24. Taking the monthly average income of the deceased at Rs. 1,150/-. as held by the learned Claims Tribunal, that annual income of the deceased would come to Rs. 13,800/-. The Claims Tribunal has deducted 50% of this sum towards domestic and other necessary expenses for determining the real loss to the claimants. After deducting this 50%, the amount would come to Rs. 6,900/-. If we multiply this amount with 16, the amount of compensation will come to Rs. 1,10,400/- and if we round it off to a lesser amount of Rs. 1,10,000 in view of lump sum payment, it will come to Rs. 1,10,000/- only which I think would be the just compensation to the respondents.

25. The Claims Tribunal has also awarded a claim of Rs. 10,000/-for loss of association, care and teaching and another Rs. 10,000/- for engaging a tutor for claimant No. 2 for about 20 years. Apart from the fact there is no scope for allowing such claims in motor accident cases, there is absolutely no scope for awarding these claims in the multiplier system and, hence, these claims have to be disallowed.

26. Now coming to the question of apportionment, I find that both the respondents are class I heirs of the deceased and are entitled to half share each in accordance with the provisions of Section 15 read with section 16 of the Hindu Succession Act. But the question of apportionment would not arise in this case as Mr. Ganesh Prasad Singh, learned counsel for the respondents, has informed us that respondent No. 1 would not take anything out of the claim money and that he would deposit the entire amount in the name of respondent No. 2 and for his benefit, in some long term fixed deposit account or accounts either in the post

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office or in some nationalised bank. The amount so deposited shall be the exclusive property of respondent no 2 although respondent No. 1 shall act as his guardian while making the deposit. In case, the deposit matures before respondent No. 2 attains majority, respondent No. 1 shall reinvest it in the same way. Respondent No. 1 may, however, if necessary, spend the interest earned on the deposit for the benefit of respondent No. 2. We would like to place on record our appreciation for this noble gesture shown by No. 1. In this background, no apportionment is being made in this case as the entire claim money shall go to respondent No. 2 in view of the offer made on behalf of respondent No. 1. We also endorse the aforesaid terms offered by him and order accordingly.

27. For the reason given above, the compensation of Rs. two lacs allowed by the learned Claims Tribunal is reduced to Rs. 1,10,000/- only. The appeal is accordingly allowed in part but in the circumstances, there would be no order as to costs.

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