
(2005) 10 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 606 of 1994

Chandrakala and Others

APPELLANT

Vs

Kanwar Singh and Others

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Citation : (2006) 3 ACC 96 : (2006) 2 RLW 1338 : (2006) 2 WLC 730

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : A.N. Khan, for the Appellant; Hawa Singh, for the Respondent

Judgement

R.S. Chauhan, J.—On 10.9.1989, while returning with three friends on his Motorcycle, Kesar Dev met with an accident with a Bus driven by respondent No. 1. Consequently, Kesar Dev alongwith two other riders expired on the spot. The fourth person, namely Vijay Kumar sustained grievous injuries. Kesar Dev's parents and brother and sisters filed a claim petition before the Motor Accident Claims Tribunal, Jhunjhunu, wherein they sought a compensation for Rs. 21,23,000/-. Since the Bus was owned by the Delhi Transportation Corporation, therefore the Bus driver and the Corporation were arrayed as respondents in the said claim petition.

2. In its written statement, the Corporation contended that the deceased was riding the Motorcycle alongwith three other persons. According to them, the accident occurred because suddenly a goat kid ran across the road, which the deceased tried to avoid. While trying to avoid the kid, the deceased dashed against the coming Bus. Therefore, according to them it was clearly a case of contributory negligence. They further contended that the income of the deceased as claimed by the claimants is on the higher side. They further claimed that the compensation asked for is imaginary and baseless.

3. In order to prove its case, the claimants examined six witnesses and submitted three documents. The respondent Corporation examined the driver of

the Bus as a witness, but did not submit any document. The learned Tribunal framed five issues. Vide award dated 5.3.1994, the learned Tribunal awarded a compensation of Rs. 65,600/-. Since the claimants are aggrieved by the said award, they have filed the present appeal before us for enhancement.

4. Mr. K.N. Khan, the learned Counsel for the appellant, has raised give contentions before us. Firstly, despite the fact that there was no rebuttal from the side of the respondents, still the learned Tribunal has not accepted the income of the deceased as Rs. 3500/- per month. On the basis of conjectures and surmises, it has taken the income to be merely Rs. 800/- per month. According to him, the deceased was a young man of 22 who was working as a goldsmith in Jaipur. He was not only doing his own work, but was also working in the shop of one Khemraj Hasalsar. According to the testimony of the mother, Chandrakala (PW. 1), her son was earning Rs. 3500/- per month, out of which he was spending Rs. 500/- on himself. Similar is the testimony of the father, Shri Sita Ram (PW. 2). Despite these testimonies, the learned Tribunal has taken the income of the deceased to be merely Rs. 800/- per month.

5. Secondly, Mr. Khan has contended that the learned Tribunal has erred in denying any compensation to the brother and the sisters. According to him, the entire family was dependent on the deceased for their financial support. Therefore, the sudden demise of the deceased also adversely affected the financial dependency of the brother and sisters.

6. Thirdly, according to him a wrong multiplier of 20 has been applied in the present case. Fourthly, according to him the learned Tribunal has erred in deducting 20% of the compensation award ostensibly on the ground that a lump sum amount is being paid. Lastly, he has contended that no compensation has been awarded for the loss of Motorcycle by the learned Tribunal.

7. On the other hand, Mr. Hawa Singh, the learned Counsel for the respondents, has argued that no documentary evidence was produced by the claimants to prove the fact that the deceased was earning Rs. 3500/- per month. Hence, the Tribunal was justified in calculating the income to be Rs. 800/- per month. According to him, the learned Tribunal has applied the correct multiplier. Thus, he has supported the impugned award.

8. Having heard the learned Counsels, we have examined the evidence and analyzed the impugned award.

9. According to PW. 1 Smt. Chandrakala, the mother of the deceased. Kesar Dev was the only one who was supporting the parents and the younger brother and sisters. Since Kesar Dev's elder brothers were living separately, therefore they were not financially supporting the parents and the other brothers and sisters. Thus, the claimants were financially dependent on the deceased. According to PW.2 Sita Ram, the father of the deceased, while he was working as Goldsmith in the village, he could earn Rs. 2000-3000 per month. Kesar Dev was working as a freelance Goldsmith in Jaipur. Therefore, naturally, his income would be more

than Rs. 3000/- per month. Even if a conservative estimate is made, even then, it could not be less than Rs. 2100/- per month. After all, he must have left the village with the hopes of earning more than what his father was earning in the village as a Goldsmith. Moreover, the testimony of PW.1 and PW: 2 has not been shaken in the cross-examination. Therefore, there is no reason for rejecting their testimony on the point of the income of the deceased. Hence, the presumption made by the learned Tribunal that the deceased was earning merely Rs. 800/- per month is not based on any evidence. Therefore, the first contention raised by Mr. Khan is a sound one. The learned Tribunal should have taken the income of the deceased as a minimum of Rs. 2100/- per month. Since the deceased is presumed to have spent 1/3rd on himself he would have contributed Rs. 1400/- per month to the claimants.

10. In order to deny compensations to the brother and sisters, the learned Tribunal has relied on the case of Hans Raj and Ors. v. Neelam Chopra and Ors. 1986 ACJ 152. However, in the case of Gujrat State Road Transportation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr. 1987 (2) TAC 1, the Apex Court has clearly held that "we should remember that in Indian family brothers, sisters and brothers" children and sometimes foster children live together and they are dependent upon the bread winner of the family and if the bread winner is killed on account of motor vehicle accident, then there is no justification to deny them compensation relying upon the provisions of the Fatal Accident Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act In relation to cases arising out of motor vehicles accidents." In this case, the Hon''ble Supreme Court not only held that claim petition filed by brother of the deceased is maintainable under the Motor Vehicle Act, 1939, but also upheld the compensation awarded by the Hon ''ble Gujrat High Court to the brother of the deceased. Thus, in the present case the learned Tribunal should have awarded a compensation to the brother and the sister of the deceased.

11. As far as the multiplier is concerned, considering the fact that the impugned award was passed prior to the introduction of Schedule-II attached to the Motor Vehicle Act, 1988, the learned Tribunal is justified in applying a multiplier of 20. Hence, the contention raised by Mr. Khan with regard to the multiplier is rejected.

12. According to Sita Ram (PW. 2) the deceased had bought the Motorcycle from one Vidyadhar resident of Chidawa for a sum of Rs. 10,000/- as it was a second hand Motorcycle. His testimony on this point has not been shaken in the cross-examination. PW.1 Smt. Chandrakala also tells us that her son had bought a Motorcycle from Chidawa, although she does not know the price paid for the said Motorcycle. Since her testimony has not been shaken, therefore there is no cogent reason for the learned Tribunal to dismiss their testimony in toto on this point. Hence, a compensation of Rs. 10,000/- should have been paid for the loss of the Motorcycle.

13. While relying on a judgment of the Hon''ble Supreme Court rendered in the case of Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and

another, this High Court in the case of Suja Devi and Others Vs. Hari Singh and Others, clearly held that the learned Tribunal is unjustified in ordering that 30% of amount of compensation be deducted from the total amount of compensation on the ground that lump sum payment was being made. Therefore, even in the present case merely because a lump sum amount is being paid to the claimants, the learned Tribunal was not justified in directing that 20% should be deducted from the total amount of Rs. 82,000/-. Thus, in our considered opinion no such deduction could be ordered by the learned Tribunal.

14. Although the learned Tribunal has directed the payment of Rs. 10,000/- for pain and agony caused to the mother because of the sudden death of her son, it has not paid any compensation of a like amount for the loss of love and affection caused to the father and to the younger brothers and sisters. Therefore, we deem it proper that besides the Rs. 10,000/- payable to the mother, Rs. 30,000/- should be paid to the father and to the younger brothers and sisters for the loss of love and affection.

15. In the result, the appeal is partly allowed. Taking the amount of income spent on the claimants to be Rs. 1400/- per month, the compensation payable is $\text{Rs. } 1400 \times 20 \times 12 = \text{Rs. } 3,36,000/-$. We further direct that Rs. 10,000/- should be paid for the loss of Motorcycle and Rs. 30,000/- should be paid for the loss of love and affection suffered by the father and the younger brothers and sisters. The total amount of Rs. 3,76,000/- shall be paid to the claimants alongwith interest of 9% from the date of application to the date of realization of the compensation amount. To this extent, the impugned award stands modified and the rest of the terms and conditions of the award are maintained.