
(1982) 12 OHC CK 0008
In the Orissa High Court
Case No : Misc. Appeal No. 283 of 1977

Commissioner, N.C.C. Group

APPELLANT

Vs

Smt. Nirmala Moharana and Others

RESPONDENT

Date of Decision : 17-12-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 110CCC

Citation : AIR 1983 Ori 193

Hon'ble Judges : R.N. Misra, C.J

Bench : Single Bench

Advocate : G.B. Patnaik, for the Appellant; Ajoy Kumar Mohanty, for the Respondent

Judgement

R.N. Misra, C.J.—This is an appeal u/s 110-D of the Motor Vehicles Act of 1939 challenging the award of the Second Motor Accident Claims Tribunal dated 3-8-1977 awarding compensation of Rs. 36,000/- to respondents 1 to 4.

2. One Satyananda Moharana, while proceeding on cycle around noon time on 30-1-1976 from Daragha Bazar to Bhagatpur was knocked down on the road near the Cuttack Central Jail by a truck bearing registration No. RD 22341. That truck belonged to the 1st Orissa Batallion of the National Cadet Corps. As a result of the impact of the collision, Satyananda fell down from his cycle and came under the vehicle. He was removed to the City Hospital and from there to the SCB Medical College Hospital where he was declared to be already dead. Respondents 1 to 4 who are his dependants laid claim for compensation of Rs. 50,000/- by alleging that the deceased who was aged about 30 years was having a monthly income of about Rs. 500/-.

3. In the abjection the appellant took the plea that Satyananda was a daily worker and had an income of Rs. 4/- per day. The claim was, therefore, excessive. It was pleaded that the vehicle was, not being driven either negligently or rashly and the accident was the outcome of negligence and fault of the victim himself. The Jail Road was very crowded and the driver of the vehicle

was very cautious. When the vehicle reached the gate of the Central Jail, the driver got the feeling that the left rear wheel of his vehicle had run over something. The vehicle was brought to an immediate halt and the victim was found to have been lying on the road. With a view to providing treatment. Satyananda was removed to the hospital where he ultimately died.

4. The Tribunal framed three issues, namely (i) whether, the accident was the outcome of rash and (negligent driving of the vehicle; (ii) whether the compensation claimed was high and excessive; and fill to what reliefs the claimants were entitled.

Four witnesses were examined on behalf of the claimants while the driver was examined on the respondents" side. On the basis of the evidence on record, the Tribunal came to bold:--

"I am of the view that the driver of the vehicle was rash and negligent in driving the vehicle at the time of the accident and that has resulted in the death of late Satyananda."

On the basis of the evidence of P. Ws. 1 and 2, he came to further hold that the daily income of the deceased was Rs. 8/-and he was cm the whole contributing Rs. 4/- a day or Rs. 120/- a month for the maintenance of his dependants. The Tribunal found that the victim was aged about 30 and estimating that he would have been active for a further period of 30 years, the Tribunal worked out the total compensation at Rs. 43,000/-and reducing it by one-sixth in view of the lump sum award of compensation, he estimated the amount at Rs. 36,000/- net.

5. So far as the finding of rash and negligent driving of the vehicle is concerned, I find that the evidence is mostly one-sided. P. Ws. 3 and 4 are independent eye witnesses. They have given a detailed picture of how the accident occurred. P. W. 3 is a florist having a shop in the vicinity of the spot of accident P. W. 4 is a carpenter. Both of them have supported the claimants" version of the incident. The sole evidence to rebut comes from the driver of the vehicle. Admittedly, the vehicle had other occupants including an officer of the National Cadet Corps. For reasons best known to the appellant, such evidence has been withheld. The Tribunal, in my view, has come to the correct conclusion toy drawing verse inference that the vehicle was being driven rashly and negligently at the relevant time and the accident was the outcome of such driving.

6. The only other aspect to be considered is as to what should be the adequate amount of compensation. The Tribunal, as I have already indicated, found that the contribution of the deceased to the family was Rs. 120/- per month. Otherwise stated, the position is that on account of the death of Satyananda, his dependants have been put to a loss of that amount every month. At that rate per month, the total amount per year would work out at Rs. 1440/-. The appellant's counsel suggests that if compensation which would fetch that amount of interest is awarded, the claimants" purpose would be achieved. There are different modes of quantifying compensation. In the case of Sabita Pati v. Rameshwar

Singh 1973 ACJ 319, a Division Bench of this Court quoted with approval the observations of the Supreme Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, to the following effect:--

"The starting point is the amount of wages which the deceased was earning the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a number of years' purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt. The number of years' purchase is left fluid, from twelve to fifteen has been quite a common multiple in the case of a healthy man, and the number should be materially reduced by reason of the hazardous nature of the occupation of the deceased man. These principles are, however, only appropriate where the deceased was the bread-winner of the family. Obviously, they cannot be applied for example, where the claim is in respect of a mere expectation, the deceased's contribution to the family was in kind and not in cash."

The Supreme Court further observed :--

"Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

As I have already stated, the Tribunal proceeded by assessing the contribution of the deceased to the family at Rs. 120/- a month. There has been a cross-objection for the quantum. The two witnesses who have spoken about the earning of Satyananda have indicated that it used to be between Rs. 15/- and Rs. 18/- a day. Since there is not other evidence to contradict their statements, I see no justification as to why the Tribunal had estimated the income of Satyananda at Rs. 8/- and contribution to the family at Rs. 4/- a day. From the evidence of these two witnesses, it would be reasonable to estimate the income of Satyananda at Rs. 10/- a day and his contribution to the family at Rs 6/- per day. On such basis, the monthly contribution would have been Rs. 180/- and the annual average would work out at Rs. 2160/-. The claimants can have no grievance if they are assured of that contribution.

The average bank rate of interest has been 10 per cent on term deposits for a term of 3 years and above, if Rs 25,000 is deposited, it would earn interest of Rs. 2,500/- a year and that should adequately compensate the claimants taking into account the possibility of variation of the rate of interest and the losing value of the rupee on account of deflation.

I would accordingly accept the cross-objection, modify the finding of the Tribunal on the question of earnings of the deceased Satyananda and hold that in place of Rs. 120/- contribution of Satyananda to his dependants would work out at Rs. 180/- per month or Rs. 2160/- per year. A sum of Rs. 25,000/- given as compensation if put into a bank on term deposit would bring in Rs. 2,500/- by way of interest and that would adequately compensate the dependants. The Tribunal had directed that the compensation should carry interest at 6 per cent per annum from the date of the claim, The claim was filed on 21-4-1976. By now, the amount of interest would work out at least Rs. 10,000/- when compensation is fixed at Rs. 25,000/-. The appellant is directed to deposit with the Claims Tribunal Rs. 25,000/- towards compensation and Rs. 10,000/- towards interest within two months from today. Out of this amount, Rs. 25,000/- shall be put into a term deposit with the State Bank of India, Cuttack in the name of Nirmala Moharana, widow of Satyananda. Being the natural guardian of the minor daughters, she will bring up the children, look after their studies, give them in marriage in due course and manage their affairs as a prudent mother is expected to. The Tribunal will find out whether the widowed mother of Satyananda (Thukuri Moharana) is justifiably interested in getting any cash amount. In case she is dependent upon Nirmala and Nirmala is prepared to look after her, the remaining amount of Rs. 10,000/- received by way of interest may be released in favour of Nirmala to meet pressing necessities or may be shared by Nirmala and Thukuri in such proportion as the Tribunal may determine. The elder daughter must have become school going, and the mother may be called upon to meet expenses on that account. In case the amount of Rs. 25,000/- with interest is not paid within two months as now directed, future interest from two months hereafter shall run at 12 per cent per annum until payment is made or the amount is recovered.

7. The memorandum of cross-objection is accepted; yet the appeal is allowed in part. The amount awarded by way of costs by the Tribunal is sustained, but parties are directed to bear their own costs in appeal.