

(1981) 08 GUJ CK 0024
In the Gujarat High Court
Case No : First Appeal No. 1286 of 1980

Dahiben

APPELLANT

Vs

Chitrabhai Chakabhai Makwana

RESPONDENT

Date of Decision : 31-08-1981

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Citation : (1982) ACJ 365 : AIR 1982 Guj 188 : (1982) GLH 186 : (1982) 1 GLR 498

Hon'ble Judges : V.V. Bedarkar, J;B.K. Mehta, J

Bench : Division Bench

Advocate : K.C. Shah, for the Appellant; P.V. Nanavati and A.H. Mehta, for the Respondent

Judgement

V.V. Bedarkar, J.—A question of some importance as to how in cases of fatal accidents of agriculturist's compensation is to be computed arises in this appeal in the following circumstances:

2. On 28-4-1979 there was an accident between a truck bearing No. G.T.S. 7023 and a tractor bearing No. G.T.H. 9119. The tractor was proceeding on the road to Borsad starting from village Bodal and lift was given to deceased Hirabhai Motibhai Patel, about whose death the claim, application concerned in this appeal was filed. He was to go up to Davol village. The case was that in the tractor there were various persons and it was being driven by Mansang Mangalbhai Parmar, original opponent No. 4 (present respondent No. 4). It is the case that the truck in question driven by opponent No. 1 Chitrabhai Chakabhai Makwana (present respondent No. 1), belonging to opponent No. 2 Abdulbhai Bilalbhai Lakhani (present respondent No. 2) and insured with opponent No. 3 United India Insurance Co. Ltd. (present respondent No. 3) came in excessive speed. It was being driven rashly and negligently, and on the wrong side of the road. It dashed with the tractor. The truck went into the wrong side and fell into a ditch, while the tractor and the trailer were damaged. Hirabhai died due to this accident.

3. In this claim petition, appellant Dahiben, widow of Hirabhai Motibhai Patel claimed compensation of Rupees 80,000/- for the death of her husband. Her case was that her husband was cultivating the lands and was growing tobacco, wheat and millets and was earning Rs. 1,000/- per monthly. It was her case that the deceased was 51 years of age. He was healthy and was maintaining her, and now she has to engage a person and pay him Rs. 3,000/- per annum to look after the agricultural work, and that her income is decreased. She claimed an amount of Rs. 80,000/- with a contention that opponents Nos. 1 to 3 were liable to pay that amount on account of the rashness and negligence on the part of opponent No. 1, and in the alternative claim was made against opponents respondents Nos. 4, 5, 6 and 7.

4. The learned Tribunal after considering the evidence on record, awarded only Rs. 18,000/- as compensation considering the loss of income due to the death of deceased Hirabhai to the tune of Rs. 150/- per month, i.e. Rs. 1,800/per annum, and applied the multiplier of 10, and thus awarded Rs. 18,000/-, and to this amount the Tribunal added conventional figure of Rs. 5,000/- and thus totally awarded Rs. 23,000/-. Being aggrieved by the said award, original claimant, Dahiben has come in appeal with a request that full amount of Rs. 80,000/- should have been awarded, and therefore, claim of additional amount of Rs. 57,000/- has been made.

5. to 8. xxx xxx xxx

9. It is true that so far as the evidence is concerned, no satisfactory evidence is led to assist the Tribunal to come to a particular exact figure so far as the income derived from the land by the deceased is concerned. Not only that, but when Bai Dahi deposed before the Tribunal that her husband used to get tobacco worth Rs. 20,000 to Rs. 25,000/per annum, and other crops worth of Rs. 5,000/- per annum, and the tobacco was sold at the rate of Rs. 117 per maund, and there was 125 maunds of tobacco during cross-examination; also it is not brought Out as to what would be the expenses for cultivating this much quantity of tobacco including water, seeds, labour charges, etc. So, there is no specific evidence led to facilitate the Tribunal to come to a correct figure. But it also does not mean, as the Tribunal rightly considered, that Court should not endeavour to find out the proper figure of compensation, which would be available to the applicant.

10. Now, it does not require to be stressed that merely because land has remained and from that cultivation could be available, it cannot be said that because the corpus has remained with Bai Dahi, there should be reduction in the amount that would be awarded to her. It is of course true that if a person who is receiving a pay for the services rendered by him and he meets with an accident and dies, there is total loss of income, which would be available to his family, because every thing which the deceased was earning would stop. So far as the lands are concerned, the person who cultivates his own lands gets income from the lands due to his supervision, toil and management. So, after his death the lands would remain, but still, whatever income was available through the work of

the deceased, his supervision, toil and management, can never be overlooked. It is of course true that because the deceased has died, it cannot be considered that the entire income derived from the lands by the deceased was the complete economical loss. Nor can it be said that because lands have remained, loss can be considered to be very meagre. The Court has to evaluate the loss on rational basis.

11. It is well settled that while assessing compensation under Ss. 1A and 2 of the Fatal Accidents Act, compensation is to be evaluated under two heads, viz. (i) the loss of the amount which would have been spent On the members of the family of the dependents of the deceased victim by the deceased during the lifetime of his expected usual life, and (ii) loss to the estate of the deceased. Now, under the first head the loss has an element for maintenance, while under the second head the loss has a saving element, though the Court should not assess twice over the loss under the first head. Under Lord Wright's formula laid down in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601, the loss is ascertained by first arriving at the estimate of the annual dependency amount from the income of the deceased after deducting the amount which he would have spent on himself and the damage on his head of loss to the dependents is arrived at by awarding a lump sum amount which is calculated by applying a proper multiplier to the amount of one year's dependency. It cannot be a matter of debate in view of the settled legal position as far as this Court is concerned that no different approach or yardstick is to be adopted for assessing the compensation in case of fatal accidents to agriculturists on the supposed ground that the agriculture estate remains intact and is inherited by the heirs of the deceased. There is no justifying basis for this view because even in cases of victims under the Fatal Accidents who may be noncultivators, there may be some properties in the nature of investments, savings, etc., which may come in the hands of the heirs and representatives of the deceased as a result of his death and which were also available in the lifetime of the victim. This would, however, not justify a Tribunal to take a different view in assessment of damages on the first head u/s. 1A of the Fatal Accidents Act merely because agricultural land holdings remain intact and is available to the dependents. The fact that the dependents have inherited agricultural holdings of the deceased because of the act of tortfeasor is totally irrelevant and is completely collateral matter. The extent of holding of a cultivator in the hands of the dependents may be a relevant factor while selecting the appropriate multiplier and the Tribunal may keep in mind what has remained intact with the dependents, but it cannot have a bearing on the question as to what was the loss to the dependents on account of maintenance allowance.

12. In order to find out how far the a . tenance allowance is reduced and to that extent the loss has ensued, it may be necessary to evaluate as to what would be the additional liability of the dependents in procuring the equivalent services of that which were rendered by the deceased owner as a Manager Of the holding. The services of the owner-cum-manager cannot be put on the same par with that

of an ordinary manager who has no stake in the property except to the extent of security of his services. Besides the evaluation of the services as a manager the Tribunal has to evaluate the services of the victim in his capacity as owner also. A Manager is not necessarily interested in managing the properties in a manner, which will appreciate its value. It is only an owner-manager who is invariably interested not only in managing it for purposes of earning maximum income out of it but is equally interested in managing it in a prudent and farsighted manner as the owner so that the valuation of the property appreciates every year. The Tribunal has, therefore, not merely to find out as to what would be the value of the services of a manager merely. It has also to undertake a judicious exercise to evaluate the services of the owner-manager. The Tribunal, while under taking this exercise, should not on one hand evaluate the services as if the victim was merely a manager or the servant Or an agricultural labourer and at the same time should not lose sight of the fact that the victim as an owner manager has spent something for his necessity and convenience in discharge of his duties. The Tribunal has, therefore, to bear in mind this twofold aspect, namely (i) evaluation of the services of the victim as manager-owner and not as merely manager, and (ii) right of the victim as manager-owner to spend some amount out of his earning for his necessities and convenience in discharge of his duties. In the light of this broad guideline, we will examine whether the Tribunal was justified in evaluating the compensation as it did and thereafter evaluate the compensation according to the principles indicated herein above.

13. We must make it very clear that the principles which we have cited above are based on two rulings of this Court in (1) Gujarat State Road Transport Corporation v. Malubai Menand (1980) 21 GLR 400, to which one of us (B. K. Mehta, J.) was a party, and (2) First Appeal No. 37 of 1972 (unreported) decided on 3-2-1975, to which also one of us (B. K. Mehta, J.) was a party, We are, therefore, simply reiterating the enunciations made in those two decisions and attempting to make more elaborate and pressive, especially in view of the fact that the earnings Of a cultivator who dies in an accident should be considered in its proper perspective so as to calculate in a correct manner or as far as possible in a reasonable manner, the loss which would accrue to the heirs or dependents of such deceased cultivator.

14. As considered earlier, while referring to the grievances made by Mr. Shah, the learned Tribunal came to the conclusion that Vinubhai was a got up witness. It probably seems that reliance was placed on the evidence of Vinubhai just to show that due to the death of deceased Hirabhai, one person was required to be engaged to look after agricultural operations, which the deceased was doing, and for that an amount of Rs. 250/- per month was required to be spent. As already considered above, loss to the family cannot be calculated on the assumption that the deceased only would have helped the family to the tune of the amount spent by the family for the new servants, worker or manager appointed. An owner can never be put on the level of a manager. So, the attempt on behalf of the applicant to bring in some element of loss by examining

Vinubhai would not help the Court to come to the proper conclusion about the loss. The Tribunal also considered on rough estimate that the personal mite of the deceased would be Rs. 250/- to Rs. 300/- Per month^{1,4} and from that reduced the amount of Rs. 150/towards him. This is also not a correct approach. Mr. K. C. Shah wanted to submit that Bai Dahi has stated that the deceased was earning Rs. 1,000/- per month and, therefore, considering that figure and also considering that out of this amount of Rs. 1,000/- half the amount, i. e. Rs. 500/- might have been spent by the deceased towards him, then the amount of Rs. 500/- remains available to Bai Dahi and, therefore, that should have been considered to be the datum figure.

15. Now, even though, as we have considered earlier, there is no proper evidence led on the net income derived by the deceased, there is some evidence before us so that we can consider the extent of income which was actually available. Copies of the books of accounts from the persons who purchased tobacco from the deceased for a period of four years have been produced, and that showed that in Samvat Year 2032 tobacco worth Rs. 11,931/- was sold, in Samvat Year 2033 tobacco worth Rs. 12,042/- was sold, in Samvat Year 2034 tobacco worth Rs. 6,482/- was sold, and in Samvat Year 2035 tobacco worth Rs. 10,070/- was sold. The total figure for four years come to Rs. 40,525/- and odd. This would show that the income was round about Rupees 10,000/- per year and, therefore, it cannot be said that the amount of Rs. 1,000/- deposited to Bai Dahi was on an exaggerated side, because the income of other agricultural produce cannot be ignored. Bai Dahi her evidence has clearly stated that her husband was having tobacco crop in 12 Bighas and food crop in 5 Bighas. Therefore, though Bai Dahi could get the evidence pertaining to the sale of tobacco, income cannot be limited to that much amount only.

16. But it cannot be said that because we accept the figure of Rs. 1,000/- Per month as the income, this should be the datum figure. Mr. Shah submitted that as there are only two members in the family, it should be considered that the amount of Rs. 500/- might have been utilised by the deceased for himself while the remaining amount of Rs. 500/- is the clear loss to applicant Bai Dahi. But this argument of Mr. Shah pre-supposes that this income is after deducting the expenses towards agricultural operations. But unfortunately for Mr. Shah, no evidence is led to show as to what would be the net income, and if such evidence is not available, it would not be proper for this Court to consider that as the basis for assessing the loss to the family.

17. A Division Bench of this Court (M. P. Thakkar and Gheewala, JJ.) in an unreported decision in *Kantaben v. Patel irabhai Khodabhai*, First Appeal No. 1072 of 1979, decided on 7-1-1980, had also an occasion to consider the income of an agriculturist who died in an accident. In that case it was considered by this Court that deceased Devkaran was carrying on agricultural operations with the help of hired labourers. It is common knowledge that the minimum wages prescribed even for agricultural labourers is Rs. 5.50 per day. In the context of ,

this fact, this Court observed that it would be reasonable to proceed on the assumption that Devkaran was rendering services, which could be reasonably evaluated at Rs. 15/- per day. This was specifically considered because it was on account of the experience gained by Devkaran which he was investing in the supervision of the agricultural operations that a good crop could be raised. In that case also, deceased Devkaran, who was an agriculturist, possessed 18 Bighas of land, L e. almost the same as possessed by deceased Hirabhai! in the instant case. In the instant case;, also, Bai Dahl has clearly deposed that her husband was cultivating 17 Bighas of land personally, but during cross-examination she has admitted that they used to engage labourers and her husband used to get the work done. So, it! can well be said in the instant case that deceased Hirabhaj also would be rendering work of Rs. 15/- Per day, which would come to Rs. 450/- per month. From this, we have to deduct the amount which! would have been utilised by the decease& towards himself, and if an amount of Rupees 100/- is considered, then the amount of Rs. 350/- was available to the applicant.

18. It was argued before us that as the family of the deceased consisted of only two persons, out of Rs. 450/- at least half the amount should be considered for the deceased, and that in fact the deceased, as a male earning member of the family was looking after the agricultural work and, therefore, he might have spent more after himself. It cannot be overlooked that at present Bai Dahi is the only heir for whom the claim application is filed. Family responsibility arising out of the relationship, social obligations and the like cannot be overlooked and, therefore, mere amount of subsistence for Bai Dahi cannot be the amount which can be considered towards the compensation that could be available to her. We have considered Rs. 100/- as the amount, which would have been utilised by the deceased towards his own subsistence. But in order to keep up social status and social as well as other obligations arising out of relationship, some fund must be available to the family, and now because the deceased is no more and the family consists of Bai Dahi alone, that requirement of the unit of the family cannot be overlooked and, therefore, we think that an amount of Rs. 350/- per month can certainly be said to be the loss. If that is considered for one year, the datum figure would be Rs. 4,200/- per year.

19. Then comes the question of multiplier. It is true that while considering the income from agriculture, there may be relative reduction so far as the number of years by which the datum figure would be multiplied. It is also true that deceased was aged 51 years. But as per the evidence of Bai Dahi he was actively looking after the agricultural operations and, therefore, the possibility of his surviving for a period of 20 years more and his being able to look after the work for 15 years more cannot be overlooked. But what we have to consider in this case is the loss to Bai Dahi, and apparently at the time when she filed the application, she was aged 48 years. The learned Tribunal calculated only 10years as multiple considering the age" of the deceased as 51 years. But we think, the Tribunal was not justified. As Bai Dahi is aged 48 years, the multiple would have

normally been between 13 to 15, but we would reduce it to only 12, and if the amount of Rs. 4,200/- is" multiplied by 12, the total amount that would be 1982 Gui./13 VII G-25 available to Bai Dahi would be Rupees 50,400/-. To this amount we would add the conventional figure of Rs. 5,000/towards the loss of expectancy of life, as is done by the learned Tribunal, so, the total amount that would be available to Bai Dahi will come to Rs. 55,400/-. So. the learned Tribunal has awarded only Rs. 23,000/-. So, the additional amount of compensation that becomes awardable to applicant Bai Dahi comes to Rupees 32,400/-.

20. In the result, the appeal is partly allowed. The appellant-applicant is awarded an additional amount of Rupees 32,400/- towards compensation with interest at the rate of 6 per cent, per annum from the date of application till payment and proportionate costs. Respondents Nos. 1, 2 and 3 are held liable for the amount awarded. Appeal against the rest of the respondents is dismissed, but there will be no order as to costs of those respondents.

21. Appeal partly allowed.