

(1988) 03 AP CK 0039

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 767 of 1987

Dondapati Vinodu and Others

APPELLANT

Vs

B. Baswa Raju and Others

RESPONDENT

Date of Decision : 14-03-1988

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A
Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1989 AP 227

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : S. Sreeramulu, for the Appellant; Ashok B. Mundi and I.A. Naidu, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal raises the question regarding the computation of damages consequent to the death of an "agriculturist" u/s 110B. Motor Vehicles Act.

2. The deceased died in an accident on 27-2-1980 leaving behind him his wife, four children and mother. At the time of his death he was aged 38 years. He was an agriculturist and it is in evidence that he was having 8 acres of land and about ten cattle. Though it is argued that no documentary evidence is filed in this behalf, in view of the absence of any cross-examination on this question, I am of the view that the evidence regarding his owning 8 acres of land and ten cattle title is to be accepted. The evidence also is that income from these properties was Rs. 600/-p.m. The total claim in the petition is only for a sum of Rs. 30,000/- with interest and the lower tribunal had awarded only a sum of Rs. 7,500/- on the peculiar reasoning, namely, that the death was not a loss to the family pecuniarily, inasmuch as the claimants have received intact, the property left behind by the deceased and that nominal compensation would meet the ends of justice. The case is yet another example where the claimants' lawyer has claimed far less than what the claimants are entitled to for lack of proper

guidance while drawing up the claim petition. The award made by the tribunal is equally unsatisfactory and is yet another example of ad hoc-ism that has entered the decision making process in motor accident claims.

3. The question of estimating damages on the death of an "agriculturist" owning agricultural land and cattle, has engaged the attention of various High Courts in our country from time to time. It is necessary to refer to these cases.

4. The Allahabad High Court in *Bishamber Sahai v. State of Uttar Pradesh*, 1975 Acc CJ 154 considered the case of an agriculturist aged 33 years. The evidence was that the family income suffered by Rs. 12,000/- a year due to loss of his services and the claim was for Rs. 35,000/- the accident having occurred some time before 1964. While assessing the loss to the dependants Asthana and C.S.P. Singh, JJ. observed :

"It has come in evidence that the family had separated and Pannalal, deceased was supervising his own farm and looking after his other immovable properties. Mrs. Urmila being a widow, cannot possibly be expected to look after these properties of her own and carry on the work of farmings This being so, she will have to engage some one to look after her properties and supervise the work of the farm. Considering the; extent of the properties and the prevalent wages, we think that she would incur expenses of at least Rs. 200/- p.m. that is Rs. 2,400/- per year."

and awarded Rs. 32,000/- after holding that there was contributory negligence.

5. The Rajasthan High Court, in *Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others*, was considering the case of an agriculturist who had also some business. He was aged 30 years at his death which occurred in 1966. He was a share-holder in the parental firm and getting Rs. 180/- p.m. therefrom on an average. He was also looking after the agriculture. Though the claimants stated that the expense of engaging a farm servant in the place would be Rs. 250/- p.m. the tribunal estimated the same at Rs. 70/- p.m. The tribunal awarded, in all, a sum of Rs. 30,000/- the High Court reduced the same to Rs. 20,000/- on the ground that, while fixing the monthly contribution, the tribunal had failed to deduct the amount which the deceased would have spent on himself. The Court observed that the mere fact that the dependents have been admitted to the benefits of the family business will not go to show that the children and the widow and parents have suffered no loss on account of the death of the deceased. A.P. Sen, J. and M.L. Jain, J. (as they then were) observed (at p. 127) :

"We are also unable to say how the finding of the learned Tribunal can be disturbed in respect of loss of supervising service which the agricultural land was going to suffer on account of the death of the deceased."

6. The Gujarat High Court also dealt with this question in several cases. In an unreported judgment in *Kantabai v. Patel Virabhai Khodabhai* (F.A. 1072/1979 dt.

7-1-1980) decided by M.P. Thakkar, J. (as he then was) and Gheewala, J.) quoted in Dahiben Vs. Chitrabhai Chakabhai Makwana, , the deceased had 18 bighas of land and was cultivating the same with the help of hired labourers. Noting that the minimum wages of agricultural labour in those days was Rs. 5.50 per day, the value of the supervisory services" were estimated at Rs. 15/- per day. The said decision was followed in Dahiben Vs. Chitrabhai Chakabhai Makwana, . In that case decided by B.K. Mehta and Bedarkar, JJ. they observed (p. 190) that

"it cannot be considered that the entire income derived from the lands by the deceased was the complete economic loss."

and further (at p. 191) that:

"It may be necessary to evaluate as to what would be the additional liability of the dependants in procuring the equivalent services of those 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 equally interested in managing it in a prudent and farsighted manner as the owner so that the valuation of the property appreciates every year."

Out of the said estimate, the right of the, victim manager owner to spend some amount out of his earning for his necessities and convenience in discharge of his duties has to be considered and something deducted therefor, it was held. The Division Bench stated that they were reiterating the law laid down in Gujarat S.R.T.C. v. Malubhai Menand 1981 ACC CJ 36 : (1980) 21 GLR 400 by B.K. Mehta & S.B. Majumdar, JJ. And in F.A. No. 37/1972 (unreported) dt/- 3-2-1975 decided by B.K. Mehta & N.H. Bhatt, JJ. Thereafter, the Division Bench (i.e., in Dahiben's case) computed the value of services of the deceased owner-manager at Rs. 15/- per day or Rs. 450/- p.m. and deducted Rs. 100/- p.m. for expenses of the deceased and arrived at the monthly contribution at Rs. 350/- or Rs. 4,200/- p.a. and applied a multiplier of 12 and arrived at Rs. 50,400/-. To that, Rs. 5,000/- was added as loss of expectation of life and a sum of Rs. 55,400/- awarded.

7. The Gujarat High Court again considered this question in Rukshamaniben and Others Vs. Masaraji Amaraji Thakore and Others, . There also the deceased was an owner-manager of agricultural lands and a social worker. The total earning from agriculture to the family was estimated at Rs. 400/- p.m. out of which 50% was deducted because the deceased was dependant on his family members also for services and out of the remaining Rs. 200/-, 40% (Rs. 80/-) was deducted towards servants employed, and a sum of Rs. 120/- was arrived at as the value

of the services of the deceased towards "supervision, experience and toil. A sum of Rs. 200/- p.m. was arrived at towards his energies utilised for social work or towards -"unused earning capacity as a social worker" and in all, the loss to the family was computed at Rs. 320/- p.m. or Rs. 3840/- p.a. and the deceased being about 60 years, a multiplier of 8 was adopted arriving at Rs. 30,720/- and adding Rs. 3,000/- towards loss of expectation of life, resulting in Rs. 33,720/-. The earlier cases of Gujarat referred to above were followed.

8. The Karnataka High Court had occasion to consider the question in two cases. In *Gangaram and Another Vs. Kamalabai and Others*, the deceased was an agriculturist aged 39 years and died in an accident on 9-9-1973. The High Court held that, taking a minimum estimate of Rs. 6/-per day as wages and 50% towards personal expenses, the net contribution to the family was Rs. 3/- per day or Rs. 90/- p.m. or Rs. 1080/- p.a. The deceased was 39 years and a multiplier of 12 was applied and approximated to Rs. 12,000/- and Rs. 5,000/- was awarded towards loss of expectation of life, in all Rs. 17,000/-. Likewise in *Oriental F. & G.I. Co. v. M. C. Shashidhara*, 1984 Acc CJ 622 (Kant) the deceased was an agriculturist aged 38 years and the tribunal arrived at the loss to the dependency as Rs. 250/- p.m. or Rs. 3,000/- p.a. The accident occurred in that case on 12-10-1978. Having regard to the fact that he was "supervising" his own lands and working in his own lands, it was held that the figure arrived at by the tribunal could not be treated as excessive. Applying a multiplier of 12, the loss to the dependency was estimated to be Rs. 36,000/-and adding Rs. 4,000/- towards loss of consortium and Rs. 5,000/- towards loss to the estate, a total sum of Rs. 49,000/- was awarded.

9. In the Madhya Pradesh High Court case in *Geelabat v. Hussain Khan*, 1985 ACC CJ 44 an agriculturist aged 50 years died and he was earning Rs. 250/- p.m. The dependency in favour of his wife and eight children was estimated at Rs. 2000/- p.a. and applying a multiplier of 10, a sum of Rs. 2,000/-was awarded.

10. A similar view was taken by Venkatarami Reddy, J. in *H.K. Kamalamma v. K.T. Dharmendraiah*, (C.M.A. No. 820/82 dt/- 16-10-1987 of A.P. High Court) in this Court. Taking minimum wage at Rs. 10/- per day and deducting 50% for the expenses of the deceased, who died at his 28th year, the loss of 32 years was estimated at Rs. 57,600/- and deducting 1/5th for lumpsum payment, a sum of Rs. 46,000/- was arrived at and Rs. 10,000/- was awarded as loss of consortium : and Rs. 5000/- for pain and suffering, a sum of Rs. 62,300/- was awarded. The *Rajas than* case was referred to.

11. All the above cases show that the value of the supervisory services of a an owner-manager have to be estimated. The principle adumbrated by the lower tribunal that inasmuch as the property is left "intact" for the dependants, nothing is payable towards loss to the dependency is not correct. Such a principle was laid down by the Allahabad High Court in an old case in *Nathuram v. Chand Kaur*, AIR 1927 All 684 but has been dissented from by the Gujarat High Court. After referring to the abovesaid case, the Division Bench of the Gujarat High Court

consisting of B.K. Mehta & Majondar, JJ. in Gujarat S.R.T.C. v. Malbhai Menand, (1981 ACC CJ 36) quoted the observations of the same High Court in an earlier case (F.A. 37/72 dt/- 3-2-1973) of B.K. Mehta and N.H. Bhatt, JJ. which read as follows :

"Even in cases of victims under fatal accidents who may be non-cultivators, there may be some properties in the nature of investments, savings, etc. which may come in to the hands of the heirs and representative of the deceased, as a result of his death, and which were also available in the life time of the victim. That would, however, not justify a Tribunal to take a different view in assessment of damages on the first head u/s 1-A of the Fatal Accidents Act, merely because some property remains intact and is available to the dependants."

The above view was reiterated by the Gujarat High Court again in Dahiben Vs. Chitrabhai Chakabhai Makwana, , referred to above. Therein B.K. Mehta and V.V. Bedarkar, JJ. observed (at p. 190) :

".....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....."

The old view of Allahabad High Court is, in my view, not correct. I agree with the Gujarat High Court in dissenting from that view.

12. That the old Allahabad view in Nathu Ram Vs. Mt. Chand Kuar, is wrong is also clear from the decisions of English Courts. It has been held that "no deduction falls to be made for a dwelling house, furniture or other personal effects, if the widow or other claimant had the use of these things before the death of the deceased, and succeeds to them on his death. Heatley v. Steel Co. of Wales Ltd.; (1953) 1 All ER 489 Bishop v. Cunard White Star Co. Ltd.(1950) 2 All ER 22. The widow's enjoyment of these benefits is the same before and after the death, and there is no financial gain except that the widow may (if she wishes) convert them into money. It might be added that, if the capital value of a dwelling house and furniture had to be deducted, it would be necessary to add to the datum contribution (the initial sum from which the damages are calculated); a sum representing the rental value of free occupation of the house and furniture. This would counter-balance the capital deduction and it is therefore clear that the courts have taken a fair and simple course in disregarding a house and furniture altogether," (Munkman, Damages for Personal injuries and Deaths, 7th Ed. 1985, p. 145). Further, Munkman observes (at p. 147) as follows : --

"In general, the facile practice which prevailed some years ago of making automatic deductions for the value of property inherited, has fallen into desuetude. The Courts are taking the commonsense view that the family as a whole enjoyed the benefit of the father's property before the death, and it is not some new and countervailing benefit which has come to them for the first time, while on the other hand, they have lost completely the benefit of his earnings on which the claim is really based."

The learned author has quoted two recent rulings in this regard. In *Daniels v. Jones* (1961) 2 All ER 24 Wilmer, LJ. said that he did not agree that "the value of the estate is to be set off pound for pound against the loss of income as a matter of precise arithmetical calculation.....the realityis that (the family) were enjoying the benefit of it almost as much before the death of the deceased as they do now." In *Kassan v. Kampala Aerated Water Co. Ltd.* (1965) 2All ER 875, where an Indian trader and his wife were both killed in the same accident so that all the property came to the children, the Privy Council has given an even stronger lead. Lord Guest said on the question of set- off:

"this is a highly speculative matter, and having regard to the anticipated savings which might reasonably have been expected to be made by the deceased if he had lived, no deduction ought to be made on the Score of accelerated benefit, as these two figures cancel out."

13. From the aforesaid rulings, the following principles can be summarised :

(i) In the case of death of an agriculturist owning agricultural land, the value of the "supervisory" services of the deceased have to be first estimated. This will not be merely equivalent to the value of the services of a farm-servant or a manager of the property employed for that purpose. It will be more than that because an owner-manager takes extra care in increasing the income year by year and also in increasing the value of the property. After thus estimating the special value of the supervisory services of art owner-manager", a deduction is to be made in respect of the money the deceased would have spent for himself out of such sum and then the annual contribution to the family is to be arrived at. Then an actuarial multiplier suitable to the age of the deceased has to be applied from the Actuarial Multiplier arrived at in *Bhagwandas v. Mohd. Arif* (1987) 2 A LT 137. To the said sum may be added such sums towards loss of consortium and compensation for loss of expectation of life and pain and suffering and loss of expectation of life as decided in *Y. Varalakshmi and Others Vs. M. Nageswara Rao and Others*, .

(ii) It is not permissible to say that no amount need be awarded towards the loss to the dependency merely because the corpus of the agricultural land is left intact for the dependants. When in case of death of non-cultivators who have other properties, the properties remain intact and still damages are awrded, there is no reason why on death of cultivators Who" have agricultural land, a negative attitude should be taken. The general practice of making automatic deductions for the value of property inherited has fallen into desuetude. The value of the accelerated reciept of property cannot according to the Privy Council be treated as a total or partial equivalent of the loss to the dependancy inasmuch as the said acceleration has to be set off agaisnt the loss of savings of the deceased to the family. At the other extreme, it is equally not permissible to capitalise the income from the land by a number of years" purchase.

14. Coming to the facts of the present case, and taking the minimum wage at

Rs. 10/-per day and taking Rs. 15/- per day as the value of the special supervisory charges of an owner-manager, the monthly figure will be Rs. 450/- and estimating the contribution to the family at Rs. 250/- p.m., the annual loss will be Rs. 3000/-. The deceased was aged 38 years at the time of his death and the multiplier from the actuarial table given in *Bhagwandas v. Mohd. Arif*, (198 2 A LT 137) works out to about 13.60. As the said table is given for those earning upto 60 years, it has to be slightly increased in cases of those who are likely to earn beyond 60 years. A multiplier of 14.60 is therefore applied giving a sum of Rs. 43,800/- towards loss to the dependency. Adding a sum of Rs. 5,000/- towards loss to the dependency. Adding a sum of Rs. 5,000/-towards loss of consortium, and Rs. 7,500/- towards loss of expectation of life and Rs. 7,500/- towards pain and suffering and loss of amenities, a sum of Rs. 63,800/- is payable. But as the claim is limited to Rs. 30,000/- I award Rs. 30,000/-. The sum of Rs. 7,500/- awarded by the lower Court will carry interest at 6% p.a. from the date of petition while Rs. 22,750/- shall carry interest at 12% p.a. from the date of petition. The liability of the Insurance Company will be the whole amount.

15. As the children have become majors, except, the 5th appellant, the above sum shall be apportioned as follows: The mother of the deceased will get Rs. 4,000/- with interest; the wife shall be paid Rs. 8,000/- with interest; while each of the three major children will get Rs. 4,500/- with interest; while the 5th appellant's money of Rs. 4,500/- with interest shall be deposited in a Nationalised Bank for a period extending upto the time when the said appellant shall become a major. In the meantime, the interest payable on that sum shall be paid, every quarter, to the wife of the deceased, without security.

16. With regard to payment of periodical interest on fixed deposits, litigants are facing considerable difficulty in having to go to the seal of the Court and to file cheque petition periodically, each time troubling their lawyers. The periodical trips to the town where the court is located and the expense involved in filing petitions can be avoided if the lower tribunals direct the parties to open separate bank accounts in or near the village or town where they are residing and also direct the Bank (in which the money is invested in fixed deposit) to remit, interest amounts accruing every quarter, to such accounts of the parties opened as stated above. I direct that all Tribunals which are directing investments in fixed deposits and periodical payments of interest, to follow the above course, to avoid hardship to litigants.

17. The appeal is allowed as stated above with costs.