

(1979) 08 OHC CK 0020

In the Orissa High Court

Case No : Miscellaneous Appeal No. 223 of 1977

General Manager, Orissa State Road Transport Corporation
and Another

APPELLANT

Vs

Mst. Jema Swain and Another

RESPONDENT

Date of Decision : 23-08-1979

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1979) 48 CLT 535

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : B. Ray, O.S.R.T.C, for the Appellant; M. Patra, B. Misra, Ganeswar Rath and G.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—The Appellants have preferred this appeal u/s 110-D of the Motor Vehicles Act against the decision of the Motor Accident Claims Tribunal-cum-Additional District Judge, Sundargarh in Misc. Case No. 5 of 1975 directing payment of compensation in favour of the Respondents" due to the death by accident of Prahalad Swain the husband of Respondent No. 1 and father of Respondent No. 2.

2. Late Prahalad Swain while returning from Rourkela to Sambalpur by Rourkela-Bhanjanagar Express bus No. OSO 803 on 1-5-1975 was severely injured as the said bus met with an accident at a place 6 kilometres away from Sundargarh. After the accident Prahalad was hospitalised and he died in the Burla Medical College Hospital on 27-5-1975 due to the injuries sustained by him in the said accident. The Respondent filed a petition before the Motor Accident Claims Tribunal on 2-9-1975 claiming compensation of Rs. 1,00,000/- due to the death of the deceased in that accident. It was alleged by the claimants that the said accident took place due to the rash and negligent driving of the bus by the driver thereof.

In defence the Appellants alleged that the accident took place as the road at the place of accident was blocked by a big acid carrier tanker from before, and the bus, while crossing that big tanker by going to the extreme left of the road, skidded at that place as the road was slippery and muddy due to the acid lying at that place, and it went off the road and dashed against a tree. The accident in question was an inevitable one, and was not on account of the rash and negligent driving of the driver, and the claimants were not entitled to any compensation.

3. The Tribunal, on a perusal of the oral and documentary evidence on record, has arrived at the following findings:

The deceased died of the injuries sustained by him in the accident which took place on 1-5-1975; the accident took place due to the rash and negligent driving of the bus driver; the deceased had an annual income of Rs. 9000/- to Rs. 10,000/- and his average income, therefore, was Rs. 800/- per month; out of the said monthly income, the deceased used to spend about Rs. 400/- per month on the claimants (Respondents in this appeal) for their sustenance and expenses, and the deceased was utilising the rest for his own expenses. At the time of his death the deceased was about 55 years of age, and his life expectancy was about 65 years.

On the above findings the Tribunal says that the claimants would have got a benefit of about Rs. 48,000/- from the deceased if his death had not been hastened due to the said accident. The Tribunal has also awarded Rs. 2,000/- on account of the Petitioners' claim towards the study expenses of Petitioner No. 2 and other items as claimed by the Petitioners. Thus the Respondents have been awarded a compensation of Rs. 50,000/- to be paid to the Respondents by the Appellants with interest at the rate of 6 percent per annum from the date of the filing of the claim petition (2-9-1975) till full payment of the said amount.

4. The opposite parties before Tribunal have preferred this appeal. The claimants, Respondents herein, have also filed a cross appeal claiming higher compensation for them.

5. The finding of the Tribunal that the accident in question took place due to the rash and negligent driving of the driver of the bus could not be successfully assailed by the counsel for the Appellants.

6. The counsel appearing for the Appellants and the Respondents tried to assail the basis on which the Tribunal has fixed the compensation at Rs. 48,000/-; the former endeavoured to bring down that amount whereas the latter tried to enhance the same on respective submissions to suit their case.

The Court below on an elaborate discussion and consideration of the oral and documentary evidence on record has arrived at the finding that the income of the deceased was in between Rs. 9000/- and Rs. 10,000/- per year at the relevant time. P.W. 3, the Head Clerk of the P.W.D. has deposed that the deceased was a

"C" class contractor. It is also seen from the evidence on record that the deceased was assessed on an annual income of Rs. 9000/- to Rs. 10,000/- during the years 73-74 and 74-75. Considering the above evidence in the light of the other evidence on record the Court below has arrived at the finding that the average Income of the deceased was roughly about Rs. 800/- per month during the relevant time. Keeping out Rs. 400/- towards the expenses of the deceased for himself and for his business, the Court below has calculated that the Respondents were possibly getting a benefit of Rs. 400/- per month from the deceased at or about the time of the death. On consideration of the age of the Respondent No. 2 and that of his eldest brother as evidence by his Matriculation Certificate (Ext. 15), and other factors appearing in the evidence on record, the Tribunal has arrived at the finding that the deceased at the time of his death was about 55 years of age. Thereafter, proceeding on the basis that the normal span of life of a person of the status of the deceased is about 65 years, the Court has assessed the compensation on the basis of the approximate financial loss for ten injuries suffered by the claimants due to the death of the deceased at the age of 55 years. Rs. 2000/- has been added to that on account of the study expenses of Respondent No. 2 and other items of expenditure claimed by them. Mr. Roy could not successfully assail the factual aspects of the findings and the basis on which the compensation amount has been fixed by the Tribunal.

7. In support of the cross appeal, Mr. Misra, the learned Counsel for the Respondents, has, however; urged that as the life expectancy of persons of middle class has gone up and in many cases the Courts in India have fixed the same at 70 years, the Court was not justified in fixing the life expectancy of the deceased at "65 years". On this question, the learned Counsel appearing for both the parties cited a number of decisions, and I find there from that the majority of the Courts have found that the general expectancy of life of an average man is approximately about 65 years. In some cases of course the Courts have placed the same between 65 and 70, but that has been so where either the finding "of the Tribunal to that effect was not contested or the High Court had some definite basis to arrive at the said conclusion. In this case, there is no convincing evidence about the longevity of the family. Respondent No. 1, who has been examined as P.W. 8 in the case merely stated in her examination-in-chief that her father-in-law died at the age of 70 or 80, but when asked in cross-examination she could not state definitely at what age her father-in-law died, and she further stated that she heard about the age of her father-in-law and mother-in-law from the brothers of the deceased. Both the brothers of the deceased, though alive, according to P.W. 8, have not been examined in this case. Respondent No. 2, who has been examined as P.W. 9. has not stated anything about the longevity of the family or the age at which the father or any other close relation of the deceased died. In the absence of any convincing material or evidence on record to the contrary I do not see any justification to unsettle the finding of the Court below to the above effect.

8. Mr. Misra also endeavoured to unsettle the finding of the Court below

regarding the probable age at which the deceased died and his probable contribution towards the expenses and sustenance of the Respondents. The findings of the Court below on the above aspects are based on proper discussion of the evidence on record and I do not see any reason to interfere with the same.

9. The amount of loss of pecuniary benefits accruing to the Respondents on the death of the deceased has been calculated on due consideration of the relevant materials on record. The same is not inordinately low or disproportionately high and there is nothing on which it can be said that the finding to that effect is erroneous or unreasonable. The learned Counsel appearing for both the parties have not been able to show any compelling reason on which the same can be interfered with in any manner.

10. Mr. Ray, the learned Counsel for the Appellants, however, submits that as the compensation awarded to the Respondents, has been directed to be paid to them in a lump sum the Court below should have deducted 1/6th from the said amount on that account and 1/8th on account of uncertainties of life, as such deductions are made in all such cases. No doubt in some cases deductions have been made on the above grounds. But it is not a rule of law that whenever lump sum payment is directed to be made, the aforesaid deductions have to be made. In the case reported in *Jaswant Kaur and Others Vs. Ratti Ram and Others*, it has been held that there is no absolute rule that in every case deductions have to be made on account of uncertainties of life merely because the amount is directed to be paid in lump sum. Before directing deductions on the above accounts the facts and circumstances of each case have to be taken into consideration to see if such deductions can be justified.

In the present case the accident took place on 1-5-1975. Since that date the deceased remained confined all through in different hospitals, and he died in Burla Medical College Hospital on 27-5-1975. At the time of the death of the deceased, Respondent No. 1 was aged about 50 years and Respondent No. 2 was about 19 years old. The claim petition was preferred on 2-9-1975. The Appellants appeared before the Tribunal on 5-11-1975. On certain dates the case had to be adjourned at their instance, and ultimately it was disposed of on 30-3-1977. Thereafter the Appellants filed this appeal on 4-10-1977. No amount by way of interim relief has been offered or paid to the claimants all this time though this Court has not stayed the payment of the compensation amount awarded by the Court below. If the Appellants had not filed this appeal in this Court the Respondents would have got the compensation amount soon after the passing of the award and utilised it to their benefit, or could have invested the same in some profitable business or deposited the same in some suitable banks for earning higher interest than 6 per cent allowed by the Court below. There is also nothing on record to show that the Respondents had something to fall back upon or that they had somebody to support them all these days after the deceased became disabled in the accident. They must have incurred financial liabilities for all these years on account of the deferred payment of the compensation.

Moreover, for the treatment of the deceased after the accident and for prosecuting the claim petition they must have incurred a lot of expenses, and those expenses are not taken into account for assessing the compensation.

The Court below while assessing the compensation amount has not directed any deduction to be made therefrom. On the above considerations, I do not deem it just and proper in this case to direct any deductions from the compensation amount on the above grounds prayed for by Mr. Ray.

11. The Appellants shall pay the compensation amount of Rs. 50,000/- with interest at the rate of 6 per cent per annum from the date of the filing of the claim petition (2-9-1975) till the full payment of the same to the Respondents. The Appellants are hereby directed to pay the compensation amount with interest as ordered above to Respondents 1 and 2 before the Registrar of this Court by the 12th October, 1979. The Registrar shall put up the case in his Lawzima list well in advance of the said date and shall fix a date for the appearance of both the parties before him for payment of the said amount by the Appellants to the Respondents as directed above.

The Misc. Appeal and the cross-Appeal both are dismissed without costs.