
(1916) 05 AHC CK 0033
In the Allahabad High Court

G.I.P. Railway Company

APPELLANT

Vs

Mt. Nannhi Bai and Another

RESPONDENT

Date of Decision : 21-05-1916

Acts Referred:

Citation : AIR 1926 All 702

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit brought by the plaintiffs-respondents against the G. I.P. Railway for damages u/s 1 of the Fatal Accidents Act 13 of 1855. The plaintiffs are Mt. Nannhi Bai, the wife aged 25, and Mt. Shiaman, the daughter, aged 8 of a deceased schoolmaster named Brindaban Bihari Saran, who was killed in a Railway accident on the 10th May 1921 between Jhansi and Manikpur. In this appeal no question is raised except the amount of damages awarded by the lower Court. The lower Court has awarded a sum of Rs. 6,500, whereas the appellant claims that a sum of Rs. 4,000 offered originally by the Railway Company should have been deemed sufficient.

2. The Subordinate Judge has taken the following factors into consideration in awarding the sum of Rs. 6,500. The deceased was of 30 years of age, and at the time of his death was earning a salary of Rs. 30 per mensem as a schoolmaster and Rs. 15 per mensem by giving private tuition. There was evidence that there was nothing to prevent the deceased from rising to the post of head-master of a town school, the maximum pay of which is Rs. 60. The Subordinate Judge has pointed out that the daughter's marriage would have involved an expenditure of at least Rs. 2,000, and there was some evidence on which to support this estimate.

3. The sum of Rs. 4,000 at 6 per cent., interest would yield a sum of Rs. 20 a month, but it is doubtful whether 6 per cent., would be obtained with safety. If 5 per cent. be adopted then this sum would only give about Rs. 16 per month. It is improbable that the widow and daughter could live on the scale on which they lived during the life-time of the deceased on an expenditure of less than Rs. 30 a

month. Any savings by the widow during the 8 years before the daughter would be likely to go to the house of her husband would certainly be used for her marriage. Indeed we may take it for certain that the widow would for that purpose dispose of some of her capital as well as savings.

4. The Act provides for a Court giving such damages as it may think proportionate to the loss resulting from the death of the deceased to the plaintiff. We consider that the lower Court exercised a judicial discretion in its award, and we are not prepared in appeal to set aside its award unless it can be shown that the award was capricious or unreasonable. This the appellant's counsel has failed to prove. He has cited certain cases. Now the facts of not one of these cases appear to be on all fours with the present case. Even if they were, we are not disposed to take into consideration the results of other cases apart from the principles on which those cases were decided. No principle has been cited to us for the purpose of determining this case. We consider that the amount to be awarded in each case under the Fatal Accidents Act, is a matter of considerable difficulty, and different judicial officers may differ considerably as to the amounts which they consider appropriate in any particular case. They are, however, vested by law with the right of determining what is proper, and in appeal the appellate Court should not interfere unless it considers that the lower Court's discretion was improperly exercised.

5. In the present case we do not feel that the amount awarded was in view of the circumstances of the case excessive, and there is no reason, therefore, for interfering with the award. We may say that it is very difficult to regard any case under this Act as a test case. Each case must be determined on the merits.

6. For the above reasons, we dismiss the appeal with costs including fees in this Court on the higher scale.