
(1976) 12 AHC CK 0037
In the Allahabad High Court
Case No : F.A.F.O. No. 24 of 1975

Hinch Naraia and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 21-12-1976

Acts Referred:

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

Citation : (1977) ACJ 165

Hon'ble Judges : R.B. Misra, J;J.M.L. Sinha, J

Bench : Division Bench

Advocate : V.K. Burman, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Misra, J.—The present appeal is directed against the order of the Motor Accidents Claims Tribunal, Allahabad dated 5th of September, 1974 arising out of proceedings u/s 110A of the Motor Vehicle Act, (Act IV of 1939).

2. An unfortunate accident took place on 31st of January, 1972 at 7 p.m. in which Mrs. - Indrani Devi lost her life. She Was going on, the road in a bullock-cart when the motor vehicle No. UTB-106 hit the bullock cart from behind inflicting fatal injuries to her. She was admitted in the hospital and treatment started which continued till 24th of February, 1972 when she expired at 2.30 a.m. Hinch Narain, son of Mrs. Indrani Devi deceased, filed a claim petition on his behalf, and on behalf of the other members of the family for compensation. In this claim petition he claimed a sum of Rs. 82,000/- under various heads.

Amount of Rs. 12,000/- was claimed for mental shock and physical pain as also suffering of the deceased for 24 days; Rs. 30,000/-for the loss of normal expectation of life of the deceased for 35 years ; Rs. 2,000/- for loss of money in expenses incurred on medical treatment and for purposes of religious rights; and a sum of Rs. 38,000/- for loss of maternal affection and care to the various members of the family. It was alleged in the claim petition" that the accident

took place as a result of the rash and negligent driving of the offending bus. At the ? time of her death Mrs. Indrani Devi was 45 years of age only and her monthly income was Rs. 150/-.

3. The claim was resisted by the State of Uttar Pradesh and the stand taken by the State was that the driver of the bus Mr. Daya Shanker Dubey was not negligent or rash in driving the bus. The accident took place as a result of unavoidable circumstances. According to the State at about 7.15 p m. when the bus was approaching near the tubewell of village Imilia, the bus driver saw a truck coming from the opposite direction at a high speed and with full lights with the result that the eyes of the driver were dazzled. In front of the bus two tired bullock carts were going: The bus driver repeatedly blew horn, and tried to save the bullock cart, but bullock cart instead of going to the left swerved towards the right and they came suddenly in front of the bus and dashed with it despite every effort on the part of the bus driver to save them. It was further alleged that the bus was going at a normal speed. The deceased, according to the State, was a member of a Hindu family, her husband was an earning member. Brij Mohan Tewari and Mrs. Hubraji were not dependants of the deceased and, in any case, the claim was excessive.

The pleadings of the parties gave rise to the following five issues:

1. Whether the accident was due to the rash and negligent driving of bus No. UTB 196.
2. Whether the accident was beyond the control of the driver of the said bus.
3. Whether deceased was guilty of contributory negligence, as alleged.
4. Whether the Petitioners 3, 4 & 6 to 10, are not entitled to any compensation.
5. To what compensation are the petitioners entitled.

5. The claimant examined himself and two witnesses, but the State choose to produce no evidence. On the basis of the evidence produced by the claimant, the Claims Tribunal came to the conclusion that the driver was driving the bus rashly and negligently and he could not control it even when he found the presence of the bullock carts ; that there was no contributory negligence on the part of Mrs. Indrani Devi or the cartman ; that Ram Sajiwan Tewari, the husband, Hinch Narain, Gian Dutt, Anil Kumar, sons and Mrs. Kutia Devi, the daughter were the legal representatives of the deceased entitled to get compensation ; and that Mrs. Indrani Devi had no moral or legal liability to maintain the parents of her husband. The Tribunal, however, assessed the compensation at Rs. 5,000/- in favour of Ram Sajiwan Tewari, Hinch Narain, Gian Dutt, Anil Kumar and Kutia Devi. Against the award of the Tribunal, the claimants have now come up in appeal to this Court. The State submitted to the order and did not file any appeal or cross-objection.

6. Mr. V.K. Burman appearing for the claimants contends that the amount of

compensation assessed by the Tribunal is arbitrary and based on no principle. The deceased at the time of her death was 45 years of age. The normal span of life is usually taken to be 60 years. The deceased had, therefore, 15 years of life to run, but that was cut short on account of the death caused by the accident. In the claim petition Hinch Narain alleged that Rs. 150/- was the monthly income of the deceased at the time of her death. Ram Sajiwan (P.W. 3) father-of Hinch Narain, however, stated that the monthly income of the deceased was Rs. 500/-. He further deposed that his son had no correct idea of the income of the deceased and therefore, he stated in the claim petition that only Rs. 150/- was the monthly income of the deceased. In the claim petition itself, the income of the deceased was shown to be Rs. 150/- per month. In the circumstances, it is not possible for the Court to accept that the monthly income of the deceased was Rs. 500/-. The claimants must be pinned down to the pleadings. Therefore, the monthly income of the deceased was rightly accepted by the Tribunal at Rs. 150/-. The deceased being only 45 years of age, she shall still have to run 15 years, but her span of life was cut short on account of the accident. The claimant, therefore, would be entitled to claim compensation on the capitalization value of this amount for a period of 15 years. In *Sood & Company, Kulu v. Surjit Kaur and Ors.* 1973 A.C.J. 414, formula for determining the amount of compensation was laid down. It was observed?

The only just and simple formula for determining the amount of compensation is by capitalising the monthly contribution of the deceased towards the maintenance of his family for years by which his life expectancy stood cut short by the accident and it is only while apportioning the said compensation amongst the claimants that their respective needs and requirements be taken into consideration by the Court.

7. In *Sheikhupura Transport Company Ltd. v. Northern India Transporters Insurance Company Ltd.* and Anr. 1971 A.C.J. 206, the Supreme Court observed:

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. If the assessment made by the High Court cannot be considered to be unreasonable and we do not think it to be unreasonable, it will not be proper for this Court to interfere with the same.

8. In *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , somewhat same principle was laid down. The Supreme Court observed:

In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained, accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly, stated the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other, any pecuniary advantage which from whatever source comes to them

by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the Plaintiffs to establish the extent of their loss.

9. Section 110B of the Motor Vehicles Act gives wide discretion to the court to assess the compensation which is just in its opinion. In the instant case, the Tribunal, as observed earlier, assessed the compensation arbitrarily at a sum of Rs. 5,000/- and the court did not take into consideration the well established principle for determining the compensation, mainly because there was no correct data for purposes of calculation and in the opinion of the Tribunal the husband and the sons were making exaggerated claims and they wanted to cash the death of Mrs. Indrani Devi.

10. As pointed out in the earlier part of the judgment that Hinch Narain in his claim petition said that the monthly income of the deceased was Rs. 150/-. Father of Hinch Narain tried to exaggerate the amount by saying that the monthly income was Rs. 500/-. There being no evidence on behalf of the State in rebuttal, there is no reason why the claim made by the Petitioner and supported by Hinch Narain in his deposition should not be accepted as correct. It is true that the deceased was a member of the Joint Hindu Family. She was 45 years of age at the time of her death. The evidence produced on behalf of the claimants shows that she was actively participating in the agricultural operations. Her husband and son, both deposed that she operated the tubewell. The counsel for the State suggested that the evidence of the son and the husband that the deceased operated tubewell cannot be taken without a grain of salt. When the male members of the family were there, there is no reason why the deceased was required to operate the tubewell. In the cross-examination it has been admitted by them that there was a parda system in the women folk of the family.

This was all the more the reason why the deceased would not be expected to go outside and operate the tubewell. In our opinion, there is nothing inherently improbable in operating the tubewell as and when the occasion arose. All that has to be done is to switch on and the tubewell starts functioning. The observance of parda might be strictly followed by the younger section, but not by the old ladies. In the absence of any evidence produced on behalf of the State in rebuttal, there is no reason to disbelieve the testimony of the witnesses produced on behalf of the claimants. Even otherwise the deceased must be expected to do some work or the other, and whatever nature of work she did can certainly be evaluated in terms of money. The minimum wages fixed these days for any village worker is Rs. 5/- per day and calculating at this meager rate, the income of the deceased would certainly come to Rs. 150/- per mensem and that was the monthly income of the deceased set up in the claim petition. The court was justified in accepting Rs. 150/- as the monthly income of the deceased. If once the court accepts Rs. 150/- as the monthly income of the deceased, there is no escape from the conclusion that she would be entitled to a capitalising value of the said amount for a period of 15 years, 60 years being the

normal span of life. The Tribunal, in our opinion, has gone wrong in assessing the compensation at Rs. 5,000/- arbitrarily and not following the fixed principle which has been accepted by the court as the only just and simple formula for determining the compensation.

11. Mr. Burman next contended that the Tribunal again committed an error in not including the expenses incurred in the treatment of the deceased for 24 days. The deceased was first admitted to Sri Tej Bahadur Sapru Hospital. From there she was shifted to the Medical College, Allahabad and she remained under treatment for about 24 days. It has come in evidence that the medicines which were not available in the hospital had to be purchased. It is true that the actual amounts spent in purchasing the medicines have not been specified and vouchers for the same have not been produced, but judicial notice of this fact can be taken that patients have to purchase some medicines from outside which are not available in the hospital or the medical college. For 24 days some of the family members had to go so many times during the day and that must have entailed a lot of expenses. The amount of Rs. 2 000/- claimed in the claim petition and supported by the evidence of Hinch Narain though details of the expenditure have not been given. It is idle to expect that vouchers for the purchase of the medicines from outside would be maintained by a villager in the off hope that the same would be used in the case when a claim petition is filed. So, the non-production of the vouchers, in our opinion, cannot be made a ground for rejecting the just claim of Rs. 2,000/- incurred in the medical treatment and other allied expenses of the deceased. In our opinion, the claimants were entitled to this amount.

12. Mr. Burman did not seriously make a claim for the fabulous amount which as claimed in the claim petition for the loss of maternal love and affection to the various members of the family and we think rightly.

13. State counsel, on the other hand, contended that there was a contributory negligence inasmuch as the bullock cart driver on hearing the horn, instead of going to the left swerved to the right and the accident took place only on that account. There is no foundation for this contention. The State did not produce any witness to prove that there was any contributory negligence on the part of the deceased or the cartman driving the bullock cart. In the absence of any evidence, the court cannot make any presumption that the accident took place on account of any negligence on the part of the bullock cart driver. In *General Manager, Bangalore Transport Service v. N. Narasimhiah and Ors.* 1974 A.C.J. 379 , Division Bench of the Karnataka High Court held:

If it is found that the negligent act or omission of a driver was the proximate and efficient cause of an accident, it will not be a valid defence to say that the person injured was also negligent unless it is shown that the person injured had made it extremely difficult for the other to avoid the accident.

A person driving a motor vehicle on a busy road like the one in question must

drive the vehicle with reasonable care strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of other persons whether they are pedestrians or cyclists or others who have a similar right to use the highway on which he drives it.

If the Respondent wanted to show that there was contributory negligence on the part of the deceased or the cartman on which she was seated it should have produced evidence, but the State chose not to produce any evidence. The argument on behalf of the State, therefore, is without any foundation.

14. It was next contended for the State that in the absence of any specification in the evidence of Hinch Narain or his father Ram Sajiwan, the Tribunal was fully justified in making an arbitrary assessment of Rs. 5,000/-. We had persued the depositions of the witnesses produced on behalf of the claimants and we are satisfied that there is sufficient specification with regard to the monthly income of the deceased and the expenditure of Rs. 2,000/- in the treatment of the deceased. There is no clear evidence in regard to various other items and heads under which the claimants claimed the compensation. In the circumstances, the claimants may not get any compensation with regard to other heads viz., for the loss of maternal affection and care, and for the mental and physical shock, but we feel no difficulty in assessing the damages on the basis of her monthly income of Rs. 150/- and Rs. 2,000/- for the expenses incurred in medical treatment. Calculating on this basis, the claimants are entitled to Rs. 29,000/- including Rs. 2,000/- incurred on medical treatment. Making a deduction at the rate of 25 percent for the lump sum payment, the amount of Rs. 29,000/- is reduced to Rs. 21,750/-.

15. For the reasons given above, the appeal must succeed in part. It is accordingly allowed with costs, and the award of the Tribunal is modified to the extent that the claimants would be entitled to payment of Rs. 21,750/- in lumpsum.