(1973) 03 GAU CK 0001

In the Gauhati High Court

Case No : M.A.F. No. 18 of 1969

Kanija Khatun and Another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 29-03-1973

Acts Referred:

Citation : (1974) ACJ 103

Hon'ble Judges : D.M. Sen, J;B.N. Sharma, J

Bench : Division Bench

Advocate : P.K. Barua, for the Appellant; G.K. Talukdar, for the Respondent

Final Decision : Allowed

Judgement

D.M. Sen, J.—This is an appeal by the claimants against the judgment and order of the learned Motor Accident Claims Tribunal, Darrang Tezpur with regard to the compensation claimed by them for the death of Abdul Mazid, the husband and father of the claimants.

2. It is not disputed that Abdul Mazid was killed as a result of an accident, arising from the impact of a motor cycle driven by Corporal G.S. Tiwana of 18 P.S. Flight. C/o. 99 A.P.O. It is also not in dispute that the accident was caused through negligent driving of Corporal G.S. Tiwana, while in the course of his employment under the Union of India and that the Union of India is vicariously liable for such negligence and its consequence.

3. The only point that falls for consideration in this appeal is the determination of the life expectancy for computation of the quantum of the award. The claim petition will show that the claim was founded on the basis of an expectancy of life of 25 years more i.e. upto the attainment of 60 years of age by the deceased. The learned Tribunal, however, held that the expectancy of life of the deceased should be taken to be only for 20 years i.e. up to the age of 55 years. In this possibly the learned Tribunal was guided by the decision in Soman Vs. The General Manager, Madhya Pradesh State Koad Transport and Another, to which

the learned Senior Government Advocate has also invited our attention. In that case, the Madhya Pradesh High Court awarded compensation on the basis of 23 years of life expectancy of a person who died at the age of 32 years. In that case the person was however a Government servant, who would normally have retired at the age of 55 years and after which his earning capacity would cease or diminish to a great extent. In the instant case the deceased was not a government servant. We are of the opinion that considering the state of health of the people in general, it can be fairly held that expectancy of life of a normal man would be at least up to 60 years of age. That was the view taken by the Delhi High Court in Ishwar Devi Malik and Others Vs. Union of India and Others, . Their Lordships observed that "The deceased was aged about 40 years at the time of his death and was stated to be in good health. It can therefore, be reasonably assumed that but for the accident he would have lived upto the age of 60 years i.e. for a further period of 20 years." After considering the matter very carefully we are of the opinion that the normal expectancy of life of an average healthy person should be taken to be at least 60 years and the compensation should ordinarily be computed on that basis.

4. The principles determining the grant of compensation were very lucidly elucidated in Nance v. British Columbia Electric Rly. Co. Ltd., 1951 A.C.J. 601 by Viscount Simon who observed as follows:

It would be seen from the said mode of estimate that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the Respondents 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 sources comes to them by reason of the death i.e. the balance of loss and gain to a dependent by the death must be ascertained" Considering the test laid down above, which has also been approved by their Lordships in the Supreme Court, we hold that a just and fair calculation of the compensation would be what the beneficiaries would have received from the deceased as support for their maintenance and also as inheritance from his savings had the deceased lived and earned to the age of 60 years.

In that view of the matter we are inclined to hold that the learned Tribunal fell into an error by taking 20 years, i.e. attainment of 55 years of age as the life expectancy of the deceased. We, accordingly, enhance the amount of compensation by a further purchase of 5 years pecuniary benefit calculated on the basis of Rs. 175/- per month. However, a sum amounting to ten per cent thereof should be deducted from it on account of normal hazards of life. Accordingly, the amount of compensation is enhanced by a sum of Rs. 9,450/- only. The amount will be paid within two months from the date of this order.

Sarma, J.

I agree.

