
(1990) 06 KL CK 0061
In the High Court Of Kerala
Case No : M.F.A. No. 237 of 1985

Kerala State Road Trans. Corpn.

APPELLANT

Vs

Rajamma Valsala and Others

RESPONDENT

Date of Decision : 05-06-1990

Acts Referred:

Citation : (1990) 2 ACC 513 : (1990) ACJ 1010

Hon'ble Judges : Varghese Kalliath, J;T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : M.P. Govindan Nair and George Poonthotaam, for the Appellant; P.V. Sreedharan Nair, S.P. Aravindakshan Pillay, K.G. Anil Babu and S. Soman, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—This is an appeal by the Kerala State Road Transport Corporation One Sidhardhan, aged 37, a conductor in the Kerala State Road Transport Corporation bus, met with a fatal accident on 9.7.1979. This happened at the parking ground of city buses at East Fort. The deceased was standing by the side of a bus which was static at East Fort. Another bus, in the process of being driven in the reverse direction by a driver of the KS.R.T.C. whose legal representatives are respondents herein, hit the deceased who was standing near the side of the bus. Sidhardhan sustained very serious and fatal injuries. Though he was taken to the hospital, he succumbed to the injuries.

2. His widow and children claimed compensation for the eternal loss of a loving husband and father. In fact, though the claim for compensation is more than Rs. 1,50,000/- they limited it to Rs. 1,25,000/-. Certainly, the compensation was claimed under different heads.

3. Appellant contended that there was no negligence on the part of the driver who had driven KLX 2084 in the reverse direction since that driver was at that time not on duty. Secondly, it was contended that Sidhardhan, the deceased, was

not expected to stand near the bus which was parked in the K.S.R.T.C. parking ground. These contentions were considered by the Tribunal and it rightly rejected them. We do not want to discuss in detail the reasons for rejecting the contentions raised by the KS.R.T.C. We feel that the contention need only to be stated for rejecting it.

4. The Tribunal after considering the evidence in the case fixed the quantum of compensation at Rs. 1,25,000/- and awarded the same. The third respondent in the petition was the mother of the deceased. In apportioning compensation, the Tribunal considered the age of the mother and the period of dependency and determined that Rs. 10,000/- will be an adequate amount that can be awarded to the mother. Thus, the Tribunal awarded Rs. 1,15,000/- to the widow and children as compensation payable by the K.S.R.T.C. and Rs. 10,000/- to the mother. K.S.R.T.C. appeals.

5. We feel that there is no merit in this appeal. The deceased was aged 37 when he met with the accident. Admittedly, he was a conductor employed by the KS.R.T.C. There is clear and plain evidence in the case that he was drawing a total emolument of Rs. 686/-. The first petitioner (widow) stated before the Tribunal that normally the deceased would have spent an amount of Rs. 100/- for his personal expenses, but finally she said that the deceased used to give for the maintenance of the family an amount of Rs. 400/-. In evidence, the Tribunal found that the colleagues of the deceased who got appointment along with him, have gained promotion as Station Masters. It is in evidence that there was every possibility of the deceased becoming a District Transport Officer, had his life not been snatched away by the fatal accident.

6. PW 3, a conductor of the K.S.R.T.C. who was much junior to the deceased in service, was getting a monthly emolument of Rs. 1,000/- when he was examined on 27.9.1985. Further, there is evidence supplied by PW 5, the Administrative Section Superintendent of the KS.R.T.C. He is the person responsible in dealing with the establishment section which deals with seniority, promotion etc. of the employees. He deposed in plain and unequivocal terms before the Tribunal that the deceased would have become a Station Master and that before retirement, he would have become the District Transport Officer. It is also in evidence that the service in the KS.R.T.C. is pensionable and the evidence is that the deceased would have obtained a pension of not less than Rs. 800/- per mensem.

7. It is an important fact to be noted that there is evidence in the case that even without promotion to higher cadre, the juniors of the deceased are drawing Rs. 1,000/- per mensem. Perhaps, it may be due to revision of wages. Further, there is evidence that the colleagues of the deceased who entered service along with the deceased got promotion as Station Masters. All these facts would show, in the normal circumstances of the case, that the deceased would have become a District Transport Officer long before his retirement. In these circumstances, the claim of Rs. 400/- as pecuniary loss is very low. Considering all the other circumstances, the Tribunal found that the total pecuniary loss is Rs. 1,58,000/-.

Normally because the amount is given as a lump sum payment, some deductions have to be made. But, in this case, as we have seen now, there is not much scope for making any deductions for imponderables and for the lump sum payment of compensation, since the monetary loss determined is too low considering the circumstances and evidence unfolded in the case. The consortium of the wife is a definite claim which also has to be taken into account. While the wife lost the consortium of her husband, the children lost the paternal affection and care of their father. All the three children are minors.

8. In the matter of assessing damages and determining the quantum of compensation, the Tribunal as well as the court has to depend largely on peculiar features of the case bordering on conjectures and surmises. The court can discharge its obligation by making reasonable estimates and justifiable guesswork. A precise determination on the basis of actuals in the circumstances is impossible by human imagination. In the nature of claims involving fatal accident cases, what is being done is a determination of "what would have been" and not "what actually is". Different considerations must go in the matter of determination of compensation. We feel that in matters of determination of compensation in fatal accident cases and also of serious injuries all must approach the problem in a pragmatic and sympathetic manner. Of course, there must be some basis though not a foolproof or precise basis. Some reasonable estimates have to be made considering the age of the deceased, the age of the dependants, the earning capacity of the deceased, the nature of the injury of the deceased and other circumstances involved in the case. Certainly, the court is also expected not only to take the fortuitous circumstances and the good possibilities of the future, the advantages in favour of the deceased as well as the dependants but also the unexpected misfortunes that may happen and taking all these aspects into account, a fair and justifiable conclusion, striking a fair balance tranquilised with a sympathetic chord, but devoid of all emotionalism, sensationalism and melodramatic blood and thunder, has to be arrived at by the court. We dispose of these kinds of cases in the light of what we have said earlier in regard to the assessment of damages.

9. We always remember "to compensate in money for pain and physical consequences is invariably difficult but... no other process can be devised than that of making a monetary assessment". We have to keep in mind that it is not a "shadow system" supplementing the criminal law, in which fault is punished by an award of damages. We listen to what Lord Goddard said: "Damages which have to be paid for personal injuries are not punitive, still less are they a reward. They are simply compensation." [Vide *British Transport Commission v. Gourley* (1956) AC 185. There is nothing punitive in calling on a defendant to pay that which the law says is a just recompense for the injury the plaintiff has sustained. See *Perry v. Cleaver* 1969 ACJ 363 (HL, England). This is plainly evident from the fact that payment of just recompense is enforceable as a vicarious liability.

10. Lord Pearce observed thus in *Mallett v. McMonagle* 1969 ACJ 312 (HL,

England):

Any assessment must contain elements of reasonable prophecy and arithmetic. In assessing the proper figure, the jury have to take into account both the possibilities for good and for bad, striking a fair balance as they see it, on such evidence of the future probabilities as is given to them. To assume for certainty all the most advantageous possibilities and take no account of the disadvantageous is not to strike a fair balance.

The same approach has been made by Lord Morris of Borth-y-Gest observing thus:

In cases such as that now being considered it is inevitable that in assessing damages there must be elements of estimate and to some extent of conjecture. All the chances and the changes of the future must be assessed. They must be weighed not only with sympathy but with fairness for the interests of all concerned and at all times with a sense of proportion.

We may also refer to McGregor on Damages, 14th Edn., para 1165:

The courts have evolved a particular method for assessing loss of earning capacity, for arriving at the amount which the plaintiff has been prevented by the injury from earning in future. This amount is calculated by taking the figure of the plaintiff's present annual earnings less the amount, if any, which he can now earn annually and multiplying this by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. This latter figure has long been called the multiplier; the former figure has now come to be referred to as the multiplicand. Further adjustments, however, may have to be made to multiplicand or multiplier on account of a variety of factors, viz., the probability of future increase or decrease in the annual earnings, the so-called contingencies of life, and the incidence of inflation and taxation.

11. The Tribunal has borne in mind these principles very correctly in awarding the damages in this case. We have adverted to the reasons justifying the award. We see no merit in this appeal. The appeal is only to be dismissed. We do so. No order as to costs.