

(1984) 07 BOM CK 0001
In the Bombay High Court

K.V. Kousalya Subramanian and Others

APPELLANT

Vs

Riyaz Mohamad and Others

RESPONDENT

Date of Decision : 23-07-1984

Acts Referred:

Citation : (1985) 1 ACC 371

Hon'ble Judges : Tated, J;Sawant, J

Bench : Division Bench

Judgement

Sawant, J.

1.This is an appeal by the Claimants against the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Nasik. The original Claimants were the widow, two minor children and the mother and father of the deceased, who was a victim of a motor accident. The Tribunal had awarded Rs. 2,50,000/- as compensation to the Claimants, including Rs. 15,000/- for consortium to the widow and Rs. 10,000/- for shock and suffering to the mother and father. It is aggrieved by this quantum, that all the Claimants preferred the present appeal. During the pendency of the appeal, Appellant No. 4 died, and hence, the appeal is being prosecuted by rest of the Claimants only.

2. Shri Suchak, the learned Counsel appearing for the Appellant-Claimants, contended that the Tribunal had under-calculated the amount of compensation. His first contention was that the Tribunal had proceeded on the basis that the deceased was to retire at the age of 65 years. For this presumption there was no evidence on record. He further submitted that the minimum life-expectancy for the deceased should have been taken as 70 and the compensation calculated on that basis. His second submission was that the dependency rate of Rs. 2,500/- per month taken by the Tribunal was on a lower side considering the fact that the gross salary of the deceased was Rs. 3,682/- per month. It was erroneous according to him, to hold that the deceased was spending more than Rs. 1,000/- on himself. He therefore contended that the minimum dependency rate ought to have been taken as Rs. 3,000/- per month. His third grievance was that the

Tribunal had wrongly deducted an amount of Rs. 90,000/- received under the life insurance policy of the deceased from the total amount of compensation to which the claimants were entitled. His fourth submission was that the Tribunal had also erred in deducting an amount of Rs. 50,000/- which was paid by the Company to the Claimants as an ex-gratia payment although on account of the death of the victim. His last submission was that the Tribunal had scaled down the compensation amount by as much as 46% on account of the fact that the amount of compensation was to be received in lumpsum and also on account of the uncertainty of life. He made a serious grievance that the said rate of scaling down was excessive and not supported by decision of any Court, in support of his submissions he relied on various decisions viz; (1) Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others, ; (2) Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, ; (3) Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, ; (4) 1979 Accidents Claims Journal page 170 (Lachman Singh and Ors. v. Gurmit Kaur and Ors.) which is a decision of the Full Bench of the Punjab High Court and (5) the decision of the Andhra Pradesh High Court reported in 1984 (Volume I) of the Transport and Accident Cases at page 247 (Polavarapu Somarajayan and Ors. v. APRT).

3. As against this Shri Walawalkar, the learned Counsel appearing for Respondent No. 2-Company and Shri Chaphekar appearing for Respondent 3 -Insurance Company contended that although, in view of the Full Bench decision of this Court, the deduction of Rs. 90,000/- received under the Life Insurance Policy of the deceased was not deductible, the accelerated value of the said amount will have to be deducted from the amount of compensation payable to the Claimants as that of other amounts received in lump sum in advance. Shri Walawalkar also further contended that the evidence on record showed that the amount of Rs. 50,000/- which was paid by the Company to the Claimants was as and by way of compensation on account of the accidental death of the deceased during the course of his employment and hence, the Tribunal had rightly deducted the said amount from the total compensation. He also further pointed out that the Tribunal had committed a grave error in taking Rs. 2,500/- as the monthly dependency rate ignoring the evidence on record which showed that Rs. 3,682/- was the monthly gross salary of the deceased and it was subject to several deductions. The Income Tax payable on this amount could not have been less than Rs. 900/- per month. Ex. 71 on record further showed that the employer's annual contribution towards the Provident Fund was Rs. 3,535.25. Since the deceased had to contribute an equal amount, his monthly contribution towards Provident Fund itself was about Rs. 300/- per month. The deceased had further insured his life for Rs. 90,000/-, fixing the maturity period of 15 years for the policy, his monthly insurance premium was no less than Rs. 500/-. Thus the total deductions from his salary would be around Rs. 1,700/-. Even assuming that this figure was reduced to Rs. 1,600/-, the total take-home packet was no more than Rs. 2,080/- per month. His family consisted of his wife, his mother and father

and two minor children. He was also member of a club. Hence, roughly it can be presumed that at least Rs. 500/- to Rs. 600/- were being spent on the deceased. It is also in evidence that he had purchased shares worth Rs. 25,000/- which showed that he was saving some amounts. However, However, even if we ignore this factor, the dependency rate of the Claimants was no more than Rs. 1,500/- per month. Calculated at the rate of Rs. 1,500/- and even assuming that the total span of working life of the deceased was 65 years, the total dependency amount for 18 years (since his age at the time of the accident was 47) would be Rs. 3,74,000/- (Rs. 1500?12?18). From this amount, if the amount of Rs. 50,000/- received by way of compensation from the Company is deducted, no more than Rs. 2,74,000/- would be left. Shri Walawalkar further contended that there was no warrant for presumption that the working span of life of the deceased was 65 years. The deceased was serving in a private company and therefore it can be presumed that in the normal course he would have retired at the age of 60 and thereafter no pension would have been available to him.

Tuesday, the 24th July 1984

4. In order to appreciate the rival contentions it is necessary first to note the relevant facts. The deceased was serving as an Engineer in one Aluminium Company Limited, Mattur Dam. Along with two other Engineers, he had gone to Nasik for the Company's business and they were all proceeding by a taxi to Bombay. It was during this journey from Nasik to Bombay that a truck coming in speed from the opposite direction dashed against the taxi and the deceased met his death in the said accident. The deceased was at the time of the accident 47 years old. He was appointed in the company in 1964 on a monthly salary of Rs. 1,450/- in the scale of Rs. 1000-50-2000. At the time of his death, he was drawing the maximum salary in the time scale, i.e. Rs. 2,000/- per month, and according to the letter produced by the Company (Ex. 71), his basic salary was Rs. 42,090/-, dearness allowance Rs. 2,100/- and vehicle allowance Rs. 4,500/- i.e. in all Rs. 48,690/- per year. Excluding the vehicle allowance, the gross annual salary of the deceased was Rs. 44,190/- which comes to Rs. 3,682/- per month. There is unfortunately no evidence on record to show the retirement or superannuation age in the Company, and the learned Judge has by a rule of thumb assumed that the deceased would have served up to the age of 65 years. The members of his family at the time of his death, were himself, his wife, his two minor children and his mother and father. The evidence on record further shows that the deceased had four other brothers, who were well placed. The father of the deceased had a house at Tirpur. However, his parents had come to reside with him some years prior to the accident. There is thus nothing on record to show that the parents were exclusively dependent upon the deceased. The evidence also shows that the deceased had taken a Life Insurance Policy of Rs. 90,000/-. He was also contributing to the Provident Fund. He had invested Rs. 25,000/- in shares. He was also member of a club. As the first Applicant-widow has stated, he was spending Rs. 500/- per month for himself and was giving the remaining amount to the family for domestic expenses, although she has also

further stated that the deceased was spending about Rs. 2,500/- per month for family expenses. The evidence further shows that the Claimants have received Rs. 28,000/- as gratuity and Rs. 50,000/- as compensation from the Company on account of the accidental death of the deceased. They have also further received Rs. 90,000/- under the Life Insurance Policy of the deceased. It is on the basis of this evidence on record that we have to decide whether the amount of compensation granted by the Tribunal was incorrect, as contended by the Appellants. There is no cross objection filed by the Respondents.

5. It was conceded on behalf of the Respondents that in view of the Full Bench decision of this Court, the learned Judge could, not have deducted Rs. 90,000/- from the compensation payable to the Claimants since that amount was received under the Life Insurance Policy of the deceased which in any case the family would have received on the maturity of the policy. However, it was also conceded by Shri Suchak, appearing for the Claimants, that although the said amount itself could not have been deducted from the compensation, an accelerated "value thereof would have to be deducted since the amount was received earlier than it was due and this was solely on account of the accidental death of the deceased. - As regards the amount of Rs. 50,000/- which was paid by the Company, although Shri Suchak contended that it was paid as an ex-gratia amount, there is nothing on record to show that the said amount was an ex-gratia payment made by the Company. On the other hand the evidence given by Claimant No. 1 shows that the said amount was paid by the Company as compensation for the death of her husband as he had gone to Nasik for Company's work. Hence, it will have to be held that the amount of Rs. 50,000/- was paid by the Company and was received by the Claimants on account of the accidental death of the deceased. The amount would therefore have to be taken into consideration while determining the total amount of compensation payable to the Claimants. It also further appears that the Tribunal had completely lost sight of the fact that the Claimants had also received Rs. 28,000/- as gratuity much in advance of the date on which it was otherwise due since it would have been payable to the deceased only after his retirement. Since that amount was received earlier, the accelerated value of the same will have also to be taken into consideration for determining the compensation payable to the Claimants.

6. As regards superannuation age of the deceased, the evidence is unfortunately silent on this point. The Tribunal has without assigning any reason held that the deceased would have served up to the age of 65 years. Shri Walawalkar was right in making a grievance that if the age of 65 years referred to by the Tribunal is the age of the superannuation of the deceased, then the Tribunal was certainly wrong, since the Company was a private company and generally the age of retirement in private companies for higher executives in no case exceeds 60. As against this Shri Suchak contended that even if it is held that the age of retirement of the deceased was less than 65 years, it cannot be said that the deceased would not have earned anything after his retirement from service. Looking at the qualifications that he possessed, he would have done some

consultation work, or if nothing else he would have obtained an alternative job with another company. According to us, what is important in such cases is to decide the working span of life of a person placed in the circumstances the deceased was. The deceased was certainly a high executive with technical qualifications. The very fact that he was serving in a private company on a scale of Rs. 1000-50-2000, on the date of the accident, namely, 2nd September 1979 shows that he was not that hot in demand at the relevant time as is sought to be contended by Shri Suchak to persuade us to hold that even after his superannuation he would have continued to earn more than what he was doing during the period of his service. Secondly, we cannot lose sight of the fact that with the advancement in age the faculties of an individual also wane. Ex.71 on record which is a letter from the Company shows that annually he was getting medical reimbursement to the tune of Rs. 2,200/-. According to Claimant No. 1, both the parents of the deceased were suffering from his blood pressure. It cannot therefore be assumed that the deceased was quite hale and healthy and would have remained so throughout his 65 years of life. The deceased was further entitled to Provident Fund and not pension. It is therefore not possible to hold that the deceased would have continued to earn the same income as he was earning during the period of his service and calculate the compensation on that basis. We are therefore of the view that 65 years which have been taken by the Tribunal as the period of service of the deceased should be taken as the span of working life of the deceased and if the dependency is calculated on that basis, it would meet the ends of justice in the present case. We must at the same time mention that we are not at all impressed by the argument advanced by Shri Suchak that the working span of the deceased should be taken at least as 75 years since his father was living at the age of 75 years. There is no evidence on record to show that the father was serving or earning after the age of 65 years and if so what was his income. One should not confuse the longevity or the total life span with the working span of life.

7. Coming now to the question of the quantum of dependency, as has been pointed out earlier, the gross monthly salary of the deceased was Rs. 3,682/-. From this amount, the legal and normal deductions for Income Tax, provident fund and insurance premium will have to be made. On a rough calculation the Income Tax paid on the said income would be Rs. 900/- per month. As Ex. 71 shows, the employer's contribution to the Provident Fund was Rs. 335.25 per month. Hence it is legitimate to presume that the deceased was required to contribute an equal amount. For the insured amount of Rs. 90,000/-, taking an average period of maturity as 15 years, the insurance premium would be no less than Rs. 500/- per month. Thus the total deductions come to roughly Rs. 1,700/- per month. Even if we were to take that amount as Rs. 1,600/- instead of Rs. 1,700/-, the net salary would be Rs. 2,080/- per month. On the admission of Claimant No. 1 herself the deceased was spending Rs. 500/- per month on himself since he was also a member of the club. Even otherwise, from the sum of Rs. 2,080/-, as stated above, it will have to be held that at least Rs. 500/- were

being spent for the deceased, the rest being spent for the other members of the family. That gives us Rs. 1,500/-per month as the amount that was being spent by the deceased on the Claimants. We are excluding from this amount the savings which the deceased was making as the evidence shows that he had purchased shares worth Rs. 25,000/-. This is because it will have to be presumed that the deceased must have been in receipt of some amount by way of dividend from the said shares. This therefore gives us the total dependency amount of Rs. 3,24,000/- (Rs. 1500*12*18). From this amount we have to deduct Rs. 50,000/- which were admittedly received by the Claimants from the Company as compensation on account of the accidental death of the deceased. That gives us a sum of Rs. 2,74,000/-. From this sum of Rs. 2,74,000/- a further deduction will have to be made towards the accelerated value of the insurance amount of Rs. 90,000/- and the gratuity amount of Rs. 28,000/-, and after deducting the said accelerated value from the said amount of Rs. 2,70,000/-, a further deduction will have to be made for the accelerated value of the balance of the amount, since the amount is being received in lump sum and at a time, by the Claimants. That shows that the amount of Rs. 2,50,000/- awarded by the Tribunal was both fair and just in the present case and there is no warrant for increasing the same. Assuming therefore that the Tribunal was wrong on two counts, namely, in deducting the amount received under the Insurance Policy and in scaling down the balance of the amount to the extent of 44%, (46% as alleged by Mr. Suchak) we are more than satisfied that since the Tribunal had made other errors in favour of the Claimants as pointed out above, the net result did not make any injustice to the Claimants. The amount of Rs. 2,50,000/- stated above is both fair and just. We are, therefore, of the opinion that there is no case for interference with the award of the Tribunal.

8. In the result the appeal fails and is dismissed. In the circumstances of the case, there will be no-order as to costs.