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**(1996) 02 AHC CK 0114**  
**In the Allahabad High Court**  
**Case No : F.A.F.O. No. 636 of 1990**

Laxmi Ram and Others

APPELLANT

Vs

Chairman, U.P. State Road Trans. Corpn. and Others

RESPONDENT

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**Date of Decision :** 02-02-1996

**Acts Referred:**

**Citation :** (1996) ACJ 1139

**Hon'ble Judges :** R. Dayal, J; O.P. Jain, J

**Bench :** Division Bench

**Advocate :** S.K. Mehrotra, for the Appellant; Sameer Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R. Dayal, J.—In this appeal the appellants have claimed enhancement of compensation which was awarded by the Motor Accidents Claims Tribunal, Nainital, vide its award dated 13.4.1990 on account of a motor accident.

2. A boy named Govind Ballabh, aged about 16 years, who was a student of Xth class in a Government Inter College, travelled on 12.7.1987 by a bus bearing number URN 9523 from Haldwani to Amparao bus stand. When he was alighting from the bus, the case of the claimants is, the bus driver moved the bus and as such on account of the rash and negligent act on the part of the bus driver, the boy fell down and suffered injuries and so he was taken to hospital where he died the same day. Appellant No. 1, Laxmi Ram, is the father of the deceased boy and appellant No. 2, Maya Devi, is the mother. Appellant Nos. 3 and 4, namely, Navin Chandra and Ramesh Chandra are his brothers. The bus belonged to the U.P. State Road Transport Corporation. The appellants have claimed Rs. 2,00,000/- as compensation.

3. The claim was contested before the learned Tribunal mainly on two grounds, one that the injuries as a result of which the boy died did not result on account of accident, but subsequent to his alighting from the bus he fell in a drain and

second that compensation claimed was excessive. The learned Tribunal held that appellant Nos. 3 and 4, the brothers of the deceased, were not entitled to any compensation. A sum of Rs. 15,000/- was awarded by an interim order to the appellant No. 1 and a further sum of Rs. 10,000/- was allowed to appellant No. 2 by the impugned award. Thus total sum of Rs. 25,000/- was awarded as compensation to appellant Nos. 1 and 2.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the appellants has admitted that appellant Nos, 3 and 4 are not entitled to any compensation. However, he has submitted that the compensation awarded to appellant Nos. 1 and 2 is inadequate and the same needs to be enhanced. On the other hand, the learned Counsel for the respondents has submitted that injuries were caused by fall of the deceased into a drain and as such the appellants are not entitled to any compensation and further that since the deceased was not earning anything in monetary terms and was merely a student the compensation awarded cannot be said to be on the lower side.

6. As regards the first point as to whether the death resulted as a result of the injuries caused due to the accident on account of rash and negligent act on the part of the driver of the bus, the learned Tribunal relied upon a report made by the conductor of the bus to the effect that the passenger had fallen from the bus since the driver had moved the bus and the passenger was got admitted to hospital in injured condition. The learned Tribunal also relied upon the first information report which was lodged by Sundar Lal, P.W. 3, where also the same reason was given for the injuries. Sundar Lal deposed that he was not personally present on the scene of accident and this fact had been told to him by the deceased in the hospital. As such the evidence of this witness is admissible in evidence. On the other hand, the only testimony produced on behalf of the respondents is the statement of the driver, who has deposed that he moved the bus after the passenger had alighted from the bus, and the conductor has closed the door of the bus, and it was after the bus had already moved 8-10 steps the passengers cried out and when looked back he saw that the deceased had fallen in a drain. The learned Tribunal did not find the statement of the driver worth reliance in view of the evidence produced on behalf of the appellants and also because there was no reason why the conductor should have made false report against the version of the driver. We see no reason to differ from this finding of the learned Tribunal and, accordingly, we affirm the same.

7. As regards the quantum of compensation, the deceased was aged about 16 years and was a student of Xth class in a Government Inter College. His father entered the witness-box as PW 1. He gave his age as 60 years on the date of his evidence, i.e., 6.2.1990. He deposed that the deceased boy used to help him in his agriculture and that his parents had died at the age of 80/90 years. However, no documentary evidence was produced in support of this statement. There is no evidence on record to show that deceased was a bright student. The learned

Tribunal has taken into consideration the fact that deceased had two brothers. The elder one was a moharrir in the forest department and the other was aged about 24 years and had passed High School in IInd Division, but was unemployed. The father of the deceased is a teacher. Further the Tribunal observed that in course of time the deceased could have been married and he would have spent major portion of his income on his wife and children. At the same time, the Tribunal observed that on account of the death of the deceased his parents suffered mental agony and for this a sum of Rs. 25,000/- would be sufficient as compensation. A sum of Rs. 15,000/- had already been awarded to appellant No. 1 by an interim order. A further sum of Rs. 10,000/- was awarded to appellant No. 2 by the impugned order along with interest at the rate of 12 per cent per annum. We are of the view that the reason given by the learned Tribunal for the award of compensation on account of mental agony caused to the parents of the deceased is not a valid reason. It is true that the normal rule is to first ascertain what the deceased was earning and then to estimate how much he required or expended for his own personal and living expenses to arrive at the figure of dependency and to multiply that figure by a suitable multiplier appropriate to the age of the deceased and the dependants. However, this principle is only appropriate where the deceased was a bread-winner of the family. The claim in a case where the deceased was not earning anything is not the claim for what the deceased could have pursued in his own lifetime. It is not for loss suffered by himself but by his family after his death. The damages in such a case are to be based on reasonable expectation of pecuniary benefit or benefit reducible to money value. As observed by the Supreme Court in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, :

In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

In that case the deceased minor child was eight years old at the time of his death. The High Court had awarded Rs. 6,000/- as damages. Confirming the order of the High Court, the Supreme Court observed:

How he would have turned out in life later is at best a guess. But there was a reasonable probability of his becoming a successful man in life as he was a bright boy in the school and his parents could have afforded him a good education. It is not likely that he would have given any financial assistance to his parents till he was at least 20 years old. As seen from the evidence on record, his father was a successful person. He was in business and his business was a prosperous one. As things stood he needed no assistance from his son. There is no material on

record to find out as to how old were the parents of the deceased at the time of his death. Nor is there any evidence about their state of health. On the basis of the evidence on record, we are unable to come to the conclusion that the damages ordered by the High Court are inadequate.

8. In *Brij Kali Devi and Others Vs. Ramchand Bishan Singh and Others*, , it was held by a Division Bench of this court that nothing can be claimed on account of mental shock and physical pain suffered by deceased.

9. In *Smt. Bimla Devi and Others Vs. National Insurance Co. Ltd. and Another*, , a Full Bench of the Punjab and Haryana High Court reiterated the basic rule that the designated beneficiaries are entitled to compensation for a pecuniary or a material loss, resulting from the death of a person, from whom there was reasonable expectation of a monetary benefit, assistance or support; which the claimant has been deprived of.

10. After a careful consideration of the relevant authorities, we are of the view that the parents of the deceased child who was not earning anything are entitled to damages on the basis of reasonable expectation of pecuniary benefit or the benefit reducible to money value. Damages are awarded not for the suffering caused to the deceased, but for the pecuniary loss caused to the dependants of the deceased on reasonable expectation of what they would have got, if the deceased had not met with the fatal accident. Such damages, in their very nature, cannot be computed with precision and some element of estimation is involved. Yet estimation is to be based on the basis of relevant facts excluding considerations of the matters which rest in speculation or fancy. In the present case, the deceased was aged about 16 years and he was a student of class X. There is no evidence on record to show that he was a bright student or how he would have fared in life. Only evidence on record about the assistance rendered to his parents is the statement of his father to the effect that he was rendering some assistance to the father in agriculture. There is no evidence about money value of such assistance. There is also no evidence about the area of cultivation. In the claim petition, the income of the father is given as Rs. 2,000/- and of the elder brother as Rs. 1,000/-. Another brother was admittedly unemployed. We are of the view that the amount of compensation awarded by the learned Tribunal is not inadequate. At the same time we do not approve the observation of the learned Tribunal that appellant Nos. 1 and 2 are entitled for compensation on account of mental agony suffered by them. We have already indicated that no compensation is payable to the parents of the deceased for mental agony suffered by them. However, for the reasons we have already given, we confirm the award.

11. In the result, the appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs.