

(2006) 02 MP CK 0043

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1773 of 2001

Mohd. Latif and Another

APPELLANT

Vs

Rashid Khan and Another

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) ACJ 1380 : (2006) 2 MPHT 112

Hon'ble Judges : Manjusha Namjoshi, J;K.K. Lahoti, J

Bench : Division Bench

Advocate : Sanjeev Mishra, for the Appellant; Saurabh Tiwari, for the Respondent

Judgement

1. This appeal is directed against the award dated 11-10-2001 passed by Additional Motor Accidents Claims Tribunal, Begamganj District Raisen in Claim Case No. 17/2000 by which an amount of Rs. 77,800/- alongwith 12% interest has been awarded in favour of the appellant.

2. In this appeal appellant has challenged the quantum of the award and also the finding of the Tribunal in respect of contributory negligence of the deceased. The facts of the case are that on 26-8-2000 the deceased Mohd. Saleem was travelling in a bus from Bhopal to Sagar. This vehicle was driven by respondent Rashid Khan and was owned by M.P. State Transport Corporation, Depot Sagar, District Sagar. At about 10 P.M. when the bus reached Gairajganj in front of Sharma Hotel, the deceased Mohd. Saleem was to get down there and when driver slowed down the bus, Saleem alighted. When alighting from the bus he fell down resulting serious injuries in his waist, hips and on chest. Saleem was brought to the hospital where he was declared dead. Deceased was mechanic and was carrying on truck and tractor repairing work and as per the claimants he was earning Rs. 8,000/- per month. On the aforesaid ground the claimants who are parents of the deceased Saleem has claimed Rs. 57,90,000/-alongwith interest from the respondents.

3. Respondents contested the case by filing written statement, in which the respondents have denied the allegations of the claim petition. No specific defence has been taken by the respondents in the written statement. On the basis of the pleadings of the parties the Tribunal framed six issues and both the parties lead the evidence.

4. Claimants examined Mohd. Latif father of the deceased Saleem as A.W. No. 1, A.W. 2 - Gulam Rasool, who was travelling in the same bus, A.W. 3 Mohd. Sharif who has appeared to prove the fact that deceased was a mechanic and was earning Rs. 8,000/- per month. The respondents have examined Rashid Khan Driver of the bus and Amar Chand Jain who was travelling in the same bus. The Tribunal by appreciation of evidence produced by the parties recorded findings that Mohd. Saleem tried to alight from the bus when it was moving slow and fell down, resulting injuries to the deceased and thereafter his death. The deceased was also negligent in alighting from the running bus. The Tribunal found contributory negligence to the ratio of 50-50 per cent of both deceased and driver of the bus and awarded compensation. This award is challenged in this appeal.

5. Learned Counsel for the appellant submits that in fact deceased was not negligent, it was the rash and negligent driving of the respondent No. 1 which resulted to the accident. It is submitted by the appellant that the driver ought to have stopped the bus for alighting the deceased, but only he has slowed down the bus resulting accident and death of the deceased. Reliance is placed by the appellant to the judgment of D.T.C. Vs. Ram Kumar, ; Rajasthan State Road Transport Corporation and Others Vs. Devilal and Others, and in Vijay Singh v. Haryana Roadways and Anr. 1989 ACJ 18 and submitted that the findings recorded by the Tribunal so far as it relates to contributory negligence be set aside. It is further submitted that deceased was a mechanic and he was earning Rs. 8,000/- per month. The Tribunal erred in assessing income of the deceased at Rs. 1,200/- which finding is apparently perverse. On the aforesaid ground, it is submitted that the award passed by the Tribunal be set aside and enhanced compensation be awarded in favour of the appellant.

6. Learned Counsel appearing for respondents supported the award and submitted that findings recorded by the Tribunal are in accordance with the evidence produced in the case. Deceased himself was negligent in alighting from running bus and the Tribunal has rightly found contributory negligence of the deceased to the extent of 50%. So far as the compensation is concerned, the Tribunal applied multiplier of 16 which is on higher side. As per the judgment of the Apex Court in The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, the maximum multiplier which may be applied in the present case is 10 and there is no necessity for the enhancement of the compensation.

7. To appreciate the rival contention of the parties, firstly the question may be seen whether the deceased was also negligence in the accident or it was the negligence on the part of the respondent No. 1. In this regard the averments

made in the claim petition are very specific that when Mohd. Saleem was alighted from the bus, the driver who was in a hurry, all of a sudden driven the bus resulting into accident and deceased fell down from the bus and received serious injuries. Though respondents have filed written statement but have not taken specific plea that in fact the deceased alighted from stationary bus and thereafter the driver had driven the bus or the deceased alighted from the running bus. In the absence of any specific pleadings in the written statement, the defense as adduced by the respondent during the evidence can not be believed. In this case eye-witness is A.W. 2 Gulam Rasool, who was travelling in the same bus and was sitting in front of the gate of the bus. He has specifically stated that when the bus reached at about 10 p.m. at Tekapur Colony, Saleem asked driver to stop the bus. Bus was stopped for a while but when Saleem was alighting from the bus the driver driven the bus resulting he fell down. He saw that Saleem was crying as he had received injuries on stomach and chest. Saleem was brought to the hospital in a handcart and message was also sent to his house. When he reached the hospital, the doctor informed that Saleem has died. In the hospital father of Saleem reached and thereafter they went to Police Station for lodging FIR. In cross-examination, he has been asked whether any other person alighted from the Bus. He has replied that only Saleem alighted from the Bus and no other passenger. He further stated that on hearing of the crying of Saleem, bus was stopped. Respondents have examined Rashid Khan as N.A.W. 1, in which he has stated that the bus was stopped at Gairatganj in front of the rest house where three persons alighted. Thereafter he heard some voice from the back side and stopped the vehicle then he saw that one person is lying near bitumen drums. The vehicle was stopped just 10 steps ahead where the aforesaid passenger alighted. In the cross-examination he was asked a question that when Saleem was alighting and when his one foot was on steps of bus and Anr. was on road, the bus was driven by him negligently, he denied to this fact. Another witness has been examined by respondent as N.A.W.2 Amarchand who has also stated that at about 9.40 p.m. on the date of the incident, the bus was stopped and thereafter he became aware that one person was fell down, then he saw that one person was lying on the left side of the road. How he alighted from the bus, he is not aware as he was sleeping. In the cross-examination he was asked how many passengers were alighted alongwith the deceased, he replied that he has no knowledge. In view of the aforesaid evidence, the evidence of Gulam Rasool appears to be believable : The driver in the written statement has not taken the aforesaid plea that after the bus was stopped the passengers alighted. Why this plea has not taken in the written statement, there is no explanation on the part of the respondents. The defense of the respondent was very specific in which evidence has been adduced but without any pleadings. In the absence of the pleadings, the statement of the driver can not be accepted. The statement of Gulam Rasool appears to be natural who has stated that when the bus stopped for a while and Saleem was alighting, the driver driven the bus resulting Saleem fell down from the bus and received injuries. This is the pleaded case on the part of the claimants, appellant which find supported by the

statement of A.W. 2 Gulam Rasool. There is no reason to disbelieve the statement of A.W. 2 Gulam Rasool. This was the bus of M.P. Road Transport Corporation and there must be conductor of the bus. The seat of the Conductor is always adjoining to the gate and the conductor was the appropriate person to narrate the correct facts but he was not examined by the respondents. The statement of the driver also is not believable. Witness Amarchand was sleeping when incident occurred. In these circumstances, it is apparent that the incident occurred because of the rash and negligent act of respondent No. 1 resulting death of Saleem. Respondents are liable for the aforesaid accident.

8. Now the second question, for how much compensation the appellants are entitled from the respondents, may be considered. The Tribunal in the impugned award has recorded a finding that the deceased was mechanic but has assessed his income as Rs. 1200/- per month in Paragraph 5 of the award. While the witness No. 1 has stated that the deceased was a tractor mechanic and was earning Rs. 8,000/- per month. His age at the time of death was 21 years. In cross-examination in Para 5, he has stated that his daily income was between Rs. 250/to Rs. 400/-. A.W. 3 has also stated in respect of the income of the deceased. In para 5 he has stated that in his house, Saleem was tenant at the rate of Rs. 600/- per month. He was running mechanic shop. He was doing this business since two and a half year. Saleem had stated to him that he was saving between Rs. 300/- to Rs. 400/- per day. In a month he was earning between Rs. 6000/- to Rs. 8,000/-. In cross-examination, he has been asked that in out of season he was saving between Rs. 200/- to 400/-. Considering entire evidence in respect of income of deceased, it can very well be assessed that the deceased was earning Rs. 250/- per day. The mechanic must be doing business minimum for 25 days in a month. For 25 days he must be earning minimum Rs. 6250/- which may be accepted as reasonable income of deceased Mohd. Saleem. As he was not married, the dependency of the appellants who are parents may be assessed to Rs. 4200/- after deducting one third of personal expenses of Saleem. Now, that should be the multiplier is to be seen. The claimants are parents who are between 42 to 45 years old and as per their average age, multiplier of 15 in Second Schedule u/s 163A may be applied. The respondents have relied on the judgment of the Apex Court in Laxman Iyer (supra), in which the Apex Court held that-

9. So far as the quantum of compensation is concerned we find that at the time of accident, as revealed from the claim petition, the claimants were 47 years and 43 years respectively. It is not the age of the deceased alone but the age of claimants as well which are to be the relevant factors, in case parents or other dependents are claimants.

10. In Lata Wadhwa and Others Vs. State of Bihar and Others, and M.S. Grewal and Another Vs. Deep Chand Sood and Others, , law on the principles of assessment of compensations was elaborated. In Lata Wadhwa's case this Court while dealing with the issue in relation to the compensation to be paid in relation

to the death of children, placing reliance upon the decision of Lord Atkinson in *Taff Vale Railway Company v. Jenkins* 1913 AC 1, has ruled that "in cases of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child have lived".

11. This Court in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , has clearly observed that the decision in *Lata Wadhwa and Others Vs. State of Bihar and Others*, , definitely a guiding factor in the matter of award of compensation wherein children die under an unfortunate accident. The said observation was made after taking into consideration the conclusion arrived in *Lata Wadhwa's* case (supra), regarding the compensation which was to be paid and the multiplier which was to be applied in relation to the death of a child. This Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , held that the proper method of compensation is the multiplier method and the same view was reiterated in *MS. Grewal's* case (supra), observing that "needless to say that multiplier method stands accepted by this Court in the said decision".

12. Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated have relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of claimants it can never exceed 10 even by the most liberal standards. Worked out on that basis amount comes to Rs. 3,60,000A at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at Rs. 3,00,000/- including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation.

9. In the aforesaid case, deceased was 18 years old and that the time of death he was studying and not earning. The Apex Court considering the aforesaid circumstances found it appropriate that multiplier of 10 may be applied in peculiar circumstances of the case. In the present case deceased was earning and was not unemployed student, but the claimants are parents. In these circumstances adopting the multiplier of 10 as held by the Apex Court shall be reasonable multiplier which may be made applicable.

10. Considering the monthly dependency of the appellants which is assessed to Rs. 4200/-, annual dependency may be assessed to Rs. 50,400/- and after using

multiplier of 10, the total compensation comes to Rs. 5,04,000/-. The round figure amount which may be awarded in the case comes to Rs. 5,00,000/-. The appellants shall be entitled for Rs. 2,000/- by way of funeral expenses, Rs. 4,000/- for the loss of the estate, total compensation which may be awarded to the appellants come to Rs. 5,06,000/- (Rupees five lakhs six thousand only). On the aforesaid amount claimants shall be entitled to 6% interest from the date of the filing of the application, till the payment of the amount. If the respondents have deposited the compensation as directed by the Tribunal, due adjustment shall be given to the respondents in this regard.

11. Appellants shall be entitled to cost of the appeal which is quantified to Rs. 2000/-.