
(1997) 05 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.A. No. 998 of 1994

M.P. State Road Transport Corporation and Another	APPELLANT
Vs	
Sohanlal and Others	RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2
Motor Vehicles Act, 1988 — Section 165, 166, 168

Citation : (2000) ACJ 186 : (1998) 1 MPLJ 175

Hon'ble Judges : S.P. Khare, J;S.K. Dubey, J

Bench : Division Bench

Advocate : A.G. Dhande, for the Appellant; P.K. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is an appeal u/s 173 of the Motor Vehicles Act, 1988 by the non-applicants by which they have been directed to pay an amount of Rs. 1,98,000/- as compensation with interest at the rate of 12 per cent per annum to the applicants. There is no cross-objection.

Undisputed facts of the case are that Bus No. MKH-7748 is of the ownership of the M. P. State Road Transport Corporation. Non-applicant No. 1 Govind Prasad was its driver. On 29-11-1992 this bus was going from Chhindwara to Bina. At about 11.30 P.M. this bus fell down in a Nala near the culvert ? 12 Kms. away from village Harrai. Deceased Dr. Pravin Bhola was travelling in this bus. He sustained grievous injuries. He died on 16-12-1992 at Nagpur on account of these injuries. The applicants' case is that the bus was being driven rashly and negligently by its driver. Dr. Pravin Bhola was a Ph.D. in Mathematics. He was a Lecturer in the Government Higher Secondary School at Chhindwara. His salary was Rs. 3,500/- per month. He was unmarried. He was aged about 31 years. The applicants are his parents who claimed Rs. 11,50,000/- as compensation.

The case of the non-applicants was that there was no negligence on the part of the driver. A truck was coming from the opposite direction and the driver of the truck put on the head light of the truck all of a sudden. There was a flood of light before the eyes of the bus driver. He tried to avert the accident with the truck and in that process the bus fell down in the Nala. It was further stated by the non-applicants that the compensation claimed by the applicants is excessive.

The Claims Tribunal found on the basis of the evidence adduced by both the parties that there was negligence on the part of the bus driver. That negligence caused the accident. The Tribunal further found that the income of the deceased was Rs. 3,500/- per month. He was aged 31 years. The Tribunal assessed the dependency at Rs. 1,000/- per month and applied the multiplier of 15. The amount of compensation on the basis of multiplier system worked out to Rs. 1,80,000/-. Further a sum of Rs. 13,000/- was added towards the expenses incurred in the medical treatment of the deceased until his death and a sum of Rs. 5,000/- was added for mental agony to the applicants. Thus, a total amount of Rs. 1,98,000/- was awarded as compensation with a direction to pay interest at the rate of 12 per cent per annum from the date of the order upto the date of payment.

In this appeal it is contended that (a) there was no negligence on the part of the bus driver and, therefore, compensation could not be awarded; (b) the applicants who were the parents of the deceased were maintaining themselves out of their own earnings and being not dependent upon the deceased were not entitled to any compensation; (c) the amount of compensation which has been awarded by the Tribunal is excessive and arbitrary.

Point (a) :

So far as the appreciation of the evidence regarding negligence of the bus driver is concerned there is no error in the approach of the Tribunal. The applicant examined Dr. Mohanlal Sharma (PW. 3) who was travelling in this bus when the accident took place. According to his evidence the bus driver was rash and negligent. On the other hand Govind Vishwakarma (D.W. 1), the driver of the bus, came out with a story different from what was pleaded in the reply to the application for compensation. According to his evidence the accident took place because of the failure of the brakes of the bus and the brakes failed because of the negligence of the employees of the Workshop. He does not subscribe to the theory which was set up in the pleadings. Therefore, the Tribunal has rightly held that there was negligence on the part of the bus driver.

Points (b) and (c) :

The parents are the "legal representatives of the deceased" within the meaning of section 166 of the Motor Vehicles Act, 1988. The parents were specifically included as dependants in section 1A of the Fatal Accidents Act, 1855. Thus, the right of the parents to claim compensation for the death of their son was never doubted. The Supreme Court in C.K. Subramania Iyer and Others Vs. T.

Kunhikuttan Nair and Others, held that the parents are entitled to recover compensation on the death of their child in an accident. A reference has been made by the learned counsel for the appellants to the Division Bench decision of this Court in K.K. Jain v. Masroor Anwar 1989 MPLJ 690, in support of the plea that the parents are not entitled to compensation. This is not the ratio of that decision. In that case there were other claimants who had a preferential right to claim compensation. The latter was having sufficient income to maintain himself and his wife. Therefore, while making apportionment of the total amount of compensation no share was given to the parents. It does not mean that the "parents" were excluded from the category of the dependants of the legal representatives.

In C. K. Subramonian's case their Lordships of the Supreme Court were pleased to observe :?

"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."

Damages are assessed in reference to a reasonable expectation of pecuniary benefit as of right or otherwise from the continuance of life. The parents are entitled to recover the present cash value of the prospective service or pecuniary benefit from the deceased. It does not matter that their own income is sufficient for their maintenance.

It is contended on behalf of the appellants that in the present case the parents were earning from their business and agriculture and, therefore, they were actually not dependent upon the deceased. Sohanlal (PW. 1) has admitted in cross-examination that he is engaged in jewellery business. According to him his son Dr. Pravin Bhola was remitting Rs. 2,500/- to him every month. The Tribunal has scaled it down to Rs. 1,000/-. The parents who are earning are also entitled to reasonable expectation of pecuniary benefit and services from their children. In old age their earning capacity is diminished and they reasonably expect support and maintenance from their children. In case of the death of the children in accident the parents must be awarded the present cash value of the future pecuniary benefit and service from them.

In this case the deceased was a bachelor aged 31 years and his salary was Rs. 3,500/- per month. His father was aged 57 years and mother aged 53 years at the time of his death. Therefore dependency should have been assessed at half of the income of the deceased. That would come to $1,750 \times 12 = \text{Rs. } 21,000/-$. The proper multiplier looking to the age of the parents would be 8 and not 15. As such on the basis of the multiplier system the amount of compensation comes to Rs. 1,68,000/-. The expenses incurred in the medical treatment were Rs. 13,000/-. The Tribunal allowed Rs. 5,000/- for "mental agony to the applicants". It should have been for "pain and suffering of the deceased".

The substantive law for determination of compensation is found in sections 1A and 2 of the Fatal Accidents Act, 1855. The Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, interpreted the provisions of the Fatal Accidents Act, 1855, and laid down that the cause of action u/s 1 and that under 2 are different. While u/s 1 damages are recoverable for the benefit of the persons mentioned therein, u/s 2 compensation goes to the benefit of the estate. The claimants would be entitled to recover compensation separately under both the heads. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss u/s 1 that portion shall be excluded in giving compensation u/s 2 and vice versa.

The Supreme Court observed that the principle in its application to the Indian Act has been clearly and succinctly stated by a Division Bench of Lahore High Court in *Secretary of State v. Gokakhand* AIR 1925 Lah. 636. In that case Sir Shadi Lal C.J., stated :

"The law contemplates two sorts of damages the one is pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered form part of assets of the deceased."

The Supreme Court further clarified the legal position by giving illustration :

"X is the income of the estate of the deceased Y is the yearly expenditure incurred by him on his dependents (we will ignore the other expenditure incurred by him). $X - Y$ i.e. Z is the amount he saves every year. The capitalised value of the income spent on the dependants subject to relevant deductions is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate they cannot claim under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely if they got compensation u/s 1, representing the amount that the deceased would have spent on them if alive to that extent there should be deduction in their claim u/s 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently if u/s 1 they got capitalised value of Y u/s 2 they could get only the capitalised value of Z for the capitalised value $Y + Z$, i.e. X would be the capitalised value of his entire income."

Again in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, it

was held that compulsory damages u/s 1A of the Fatal Accidents Act, 1855 for wrongful death must be limited strictly to the pecuniary loss to the beneficiary and that u/s 2, the measure- of damages is the economic loss sustained by the estate.

In the recent decision of the Supreme Court in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, it has been reiterated that the compensation to be awarded has two elements, one is the pecuniary loss to the estate of the deceased resulting from the accident, the other is the pecuniary loss sustained by the members of the family for his death. The Court referred to these two elements in *Gobald Motor Service case* (supra). These two elements were to be awarded u/s 1 and section 2 of the Fatal Accidents Act, 1855 under which the claim in that case arose. The Court in that case cautioned that while making the calculations no part of the claim under the first or the second element should be included twice. The illustration given in that case has been quoted in this latest decision on this point.

Now a reference to the Division Bench case of this Court (*G. P. Singh C. J. and Faizanuddin, J.*) in *Ramesh Chandra v. M. P.S.R.T.C* 1982 MPLJ 426 is necessary. In that case a student aged 19 years died. The claimant was his mother aged 50 years. The income of the deceased was estimated at Rs. 300/- to Rs. 400/- per month. The dependency was fixed at Rs. 100/- per month. The multiplier of 10 was applied having regard to the age of the mother. The compensation as per section 1A of the Fatal Accidents Act, 1855 was arrived at Rs. 12,000/-. The Division Bench then proceeded to calculate the compensation for loss to the estate of the deceased. It was found that the deceased could have saved Rs. 100/- per month including the amount which he would have spent on the mother. Thus, the annual loss of earning to the estate worked out to Rs. 1,200/-. The deceased but for his death in the accident would have continued to earn upto the age of 88 years. A multiplier of 15 was found to be suitable. The total of damages on account of loss of earnings of the lost years worked out to Rs. 18,000/-. A sum of Rs. 2,000/- was added as damages for pain and suffering and loss of expectation of life of the deceased. The total amount of compensation for loss to estate payable u/s 2, Fatal Accidents Act, 1855 worked out to Rs. 20,000/-. The damages payable for loss of dependency u/s 1A of the Fatal Accidents Act having been assessed at Rs. 12,000/- and as the damages recoverable for loss to the estate u/s 2 far exceeded the damages assessed u/s 1A nothing could be awarded u/s 1A to avoid duplication. The principle which was laid down in this case was that damages recoverable for loss to the estate in the case of death must include damages for loss of earnings of the period during which the deceased would have continued to work but for his death. Damages in respect of loss of earnings of the lost years should be assessed after deduction of an estimated sum to represent the victim's probable living expenses during those years. While laying down this principle the Division Bench placed reliance on the decision of the House of Lords in *Gammel v. Wilson* (1981) 1 All. E.R. 578 which held that instead of conventional and moderate damages for loss of

expectation of life, damages for loss to the estate should include "damages for loss of earnings of the lost years" in case of death. The Division Bench then proceeded to observe as under:?

"Indeed the principle of assessment of damages laid down to Gammel's case (supra) fully accords with the decision in Gobald Motor Service Limited (supra) where it is observed that "capitalised value" of the deceased's income subject to relevant deductions would be the loss caused to the estate of the deceased u/s 2."

As already stated the recent decision of the Supreme Court has used the expression "pecuniary loss to the estate of the deceased" which is equivalent to "capitalised value" of the deceased's income subject to relevant deductions in Gobald Motor Service case (supra). In England the Parliament amended the Law Reform (Miscellaneous Provisions) Act, 1934 in 1982, by providing that damages recoverable for the benefit of the estate will not include any damages for loss of income in respect of any period after the victim's death. That was done to avoid duplication of damages. The risk of duplication in a fatal accident case can be completely avoided by fixing the annual loss of income to the estate after deducting from the annual income of the deceased not merely his living expenses but also what he might have spent on his dependants as laid down in Gobald Motor Service case (supra).

In A.P.S.R.T.C. v. Shaifya Khatoon 1985 ACJ 212 the Andhra Pradesh High Court has held that damages for loss of earnings during lost years cannot be allowed u/s 2 for the benefit of the estate essentially on the ground that the effect of Gammel's case (supra) was taken away by statutory amendment in England but without referring to Gobald Motor Services case (supra) in this context and without noticing that the award of damages for loss of earnings for lost years u/s 2 is as mentioned above supported by that decision. (See Ratanlal's Law of Torts 22nd Edition by Justice G. P. Singh at Page 108). Gammel's case (supra) has been overruled in England by the statute. There has been no such amendment to section 2 of the Fatal Accidents Act, 1855 in India. Here the law as interpreted by the Supreme Court in Gobald Motor Sendee case (supra) and followed in subsequent decisions must prevail as that is more just and equitable. It is pertinent to recall the observations of the Supreme Court in M.C. Mehta and another Vs. Union of India and others, : "We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence.

The problem of determining the just compensation arises where the claimants were not "actually" dependent upon the income of the deceased but had reasonable expectation from him. For example where the claimants are parents having income of their own to support and maintain themselves, or the claimants are children or husband who are not dependant on the income of the deceased but have income of their own. In some cases the claimants may be other legal

representatives who were not being actually maintained by the deceased. In such cases if it is found that the deceased was able to save money out of his income and was keeping the same in the form of deposits in a bank or in some other form of investment that was accretion to his estate and that would devolve upon his heirs on his natural death. If his life is cut short by accidental death naturally the capitalised value of his income subject to relevant deductions would be the loss caused to his estate. The tort-feasor must compensate for this loss irrespective of the fact whether the claimants were actually dependant upon the deceased or not. If the claimants are not able to claim under the first category i.e. loss of dependency they are definitely entitled to claim under the second category for loss to the estate. The diminution of liability in the first category would correspondingly increase the liability of the tort-feasor in the second category as illustrated by the facts of the Division Bench case in Ramchandra (supra). Therefore, the loss to the estate of the deceased must include damages for loss of earning of the lost years in order that the compensation to be awarded be termed as "just".

Applying the above test to the present case the deceased out of his income of Rs. 3,500/- per month must be saving at least Rs. 1,000/- per month after meeting his personal expenses and after providing some amount to his parents. The annual saving would come to Rs. 12,000/- and the suitable multiplier would be 15. That will bring the figure of Rs. 1,80,000/-. To this the amount of Rs. 18,000/- should be added for expenses on treatment and pain and suffering of the deceased. Thus the total compensation as per section 2 of the Fatal Accidents Act, 1855 would work out to Rs. 1,98,000/- which is more than what has been calculated as per section 1A of this Act (the amount of Rs. 1,91,000/-). The award of the compensation by the Tribunal is essentially correct.

In the result this appeal is dismissed. Costs, as incurred.