

(1986) 10 AHC CK 0015

In the Allahabad High Court

Case No : First Appeal From Order No's. 21 and 313 of 1978

Mrs. Soonoo Keke Patel and Others

APPELLANT

Vs

Bishnath Singh and Others

RESPONDENT

Date of Decision : 15-10-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 110CC

Citation : (1987) 1 AWC 207

Hon'ble Judges : R.P. Singh, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Rudreshwari Prasad, for the Appellant; Ramesh Singh and A.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—These two First Appeals From Order have been preferred against the award dated 30th Sept., 1977 of the Motor Accident Claims Tribunal, Kanpur, in Claim Case No. 1 of 1967.

2. One K.D. Patel was, at the time of accident in question on 27th March, 1967, traveling on a taxi. The taxi met with an accident with a truck owned by one Bishwanath Singh. K.D. Patel on account of the accident died on the spot. His widow and two daughters made a claim for compensation in the sum of Rs. 1,50,000/-. Apart from impleading Bishwanath Singh, the owner of the truck, and Babu Ram, the driver of the truck, as the opposite parties, the claimants impleaded Oriental Fire and General Insurance Co. as an opposite party. The claim was contested by the owner of the truck. The Tribunal, however, after taking into consideration the evidence produced by the parties allowed the claim for recovery of Rs. 42,500/- against Bishwanath Singh, the owner of the truck, and Babu Ram, the driver of the truck. The Tribunal also made an observation that Bishwanath Singh will be indemnified by the Oriental Fire and General Insurance Co. to the extent of Rs. 20,000/- which was its statutory liability. Aggrieved by the aforesaid award the claimants have preferred First Appeal From

Order No. 21 of 1978 for enhancement of the amount of compensation whereas Bishwanath Singh, the owner of the truck, has preferred First Appeal From Order No. 313 of 1978 with a prayer for setting aside the award and for dismissing the claim petition. Bishwanath Singh died during the pendency of these appeals and his legal representatives have been substituted in both these appeals.

3. We have heard counsel for the parties. Before dealing with the respective submissions of counsel for the parties it is necessary to give in a nutshell the findings recorded by the Tribunal. It has, while repelling the contention of Bishwanath Singh, the owner of the truck, that it was really the taxi driver who was negligent, recorded a categorical finding that the taxi driver took every precaution to save the accident and was not negligent and that the truck No. USF 3215 was being driven by Babu Ram, its driver, negligently and recklessly and the accident was a result of his negligent and rash driving. In regard to the amount of compensation the Tribunal recorded a finding that the deceased was contributing Rs. 6774/- from his salary and Rs. 675/- which he received as bonus per annum for the benefit of the claimants-Appellants. It has accepted the case of the claimants that the deceased was working as a Superintendent in the Raj Kumar Mills Ltd. Indore, and that there is no age of superannuation in the mills. The age of the deceased has been found to be 53 years at the time of the accident and the Tribunal has held that there being no age of superannuation the deceased could have worked up to the age of 60 years and the compensation has been determined on that basis. 60 years appear to have been taken as the normal life expectancy.

4. We now refer to the submissions made by counsel for the parties. Counsel for the claimant-Appellants has raised four points--(1) the working age of the deceased should have been taken as 70 years keeping in view the fact that the deceased would have normally lived upto that age in view of the evidence produced on behalf of the claimant-Appellants and the Tribunal committed an error in calculating the amount of compensation on the basis that he would have been able to earn his livelihood only upto the age of 60 years, (2) interest should have been allowed on the amount of compensation with effect from the date of claim, (3) no deduction for the lumpsum payment should have been made, and (4) the Insurance Company should have been directed to pay Rs. 20,000/- which was its statutory liability straight to the claimants and the manner in which the award has been given by the Tribunal in this behalf is erroneous. On the other hand on behalf of the legal representatives of the owner of the truck it has been urged by their counsel that it has been established on the evidence on record that it was really the taxi driver who was negligent, that the Tribunal was right in awarding no interest on the facts of the instant case, that the deduction for lumpsum payment was rightly made and that indeed the amount of compensation awarded is excessive and should be considerably reduced even if the finding that the accident took place on account of the negligence of the driver of the truck is upheld.

5. Having heard counsel for the parties we are of opinion that the submissions made by counsel for the claimant-Appellants deserves to be accepted. With regard to the life-expectancy it would be useful to refer to the decision of the Supreme Court in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, . In paragraph 8 of the report it has been held that in the present economic conditions the life of an average Indian has increased more than two-fold. It is, therefore, reasonable to expect that if the deceased had not died due to accident, he would have lived at least upto the age of 65 years, if not more. We have been taken through the evidence on record with regard to the age of the members of the family of the deceased. Having considered the same we are of opinion that the evidence does not justify taking a view that the life expectancy of the deceased would have been more than 65 years as held by the Supreme Court in the case of Manjushri (supra). We, therefore, proceed on the basis that had the accident not taken place the deceased would have lived at least upto the age of 65 years. On the finding that there was no age of superannuation in the mills where the deceased was working and that the deceased was enjoying a good health it can safely be held that had the deceased not met with the accident he would have been in the service of the mills upto the age of 65 years and the amount of compensation deserves to be calculated on that basis.

6. Before dealing with the submission made by counsel for the Respondents that it was the taxi driver who was negligent in driving the taxi and not the truck driver we would like to dispose of the plea about the interest not being awarded by the Tribunal first. Section 110-CC of the Motor Vehicles Act, 1939, provides that where any Court or Claims Tribunal allows a claim for compensation made under this Act, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. It is true that the word "may" has been used in Section 110-CC but keeping in view the purpose with which Section 110-CC was inserted by Act 55 of 1969 it is apparent that interest has normally to be awarded from the date of making the claim unless there are good reasons for making a deviation. In the instant case there is nothing in the award of the Tribunal which may indicate as to why the Tribunal deviated from the normal practice of awarding interest from the date of making the claim nor has any cogent reason been brought to our notice even by counsel for the Respondents. We are accordingly of the opinion that on the amount of compensation that may be awarded to the claimant-Appellants they are further entitled to get simple interest at the rate of 6 per cent per annum from the date of making the claim.

7. As regards the plea of counsel for the claimant-Appellants that the Tribunal has committed an error in making the deduction for lumpsum payment we are of opinion that in view of the settled law on the point deduction for lumpsum payment cannot be said to be erroneous. The reason for making the deduction is that when a lumpsum compensation is awarded the benefit which the family members of the deceased would have otherwise got is accelerated.

8. Coming to the question as to whether the accident was caused on account of the rash and negligent driving by the driver of the truck as asserted by the claimant-Appellants or the rash and negligent driving by the driver of the taxi as claimed by the Respondents it may be pointed out that after going through the material placed by the parties including the survey report on which considerable emphasis has been placed by counsel for the Respondents the Tribunal has recorded, as seen above, categorical finding that the accident was caused on account of the rash and negligent driving by the driver of the truck and that the driver of the taxi took every precaution to save the accident and was not negligent or rash. Having heard counsel for the parties we find no good ground to take a contrary view. The Tribunal has given cogent reasons for recording the aforesaid finding and since we are affirming the said finding we do not see it necessary to reiterate the same. Suffice it to say that those reasons are cogent and cannot by any stretch of imagination be said to be extraneous or arbitrary.

9. Now we advert to the last submission made by counsel for the claimant-Appellants that the Tribunal should have directed the Insurance Co. to make payment of Rs. 20,000/- which is its statutory liability to the claimant-Appellants. A bare perusal of Section 110-B of the Motor Vehicles Act makes it clear that the Tribunal is under an obligation to specify the amount which shall be paid by the insurer or the owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. The Tribunal should, therefore, have directed the Insurance Co. to pay Rs. 20,000/- to the claimants.

10. Coming to the actual amount of compensation to which the Appellants will, in view of the aforesaid discussion, be entitled, it may be pointed out that the Tribunal, as seen above, has held that the deceased was contributing Rs. 6774/- per annum for the benefit of the claimants. The Tribunal has multiplied this figure by seven on the finding that the deceased being 53 years of age at the time of the accident and may have been in employment till the age of 60 years the claimants were entitled to this benefit for seven years. The Tribunal has also added in the amount of compensation bonus calculated at the rate of Rs. 675/- per annum. Now that we have held that the deceased would normally have lived at least till the age of 65 years the aforesaid amounts have to be multiplied not by seven but by twelve. Adding the amount of Rs. 6774/- per annum aforesaid and the annual bonus of Rs. 675/- and multiplying the same by seven the Tribunal came to a total of Rs. 53143/- and after making a deduction at the rate of 20 per cent for lumpsum payment it fixed Rs. 42500/- as the round figure of compensation payable to the claimant-Appellants. The aforesaid amount of Rs. 6774/- multiplied by 12 comes to Rs. 81288/-. Likewise multiplying the sum of Rs. 675/-, the annual bonus, by 12 the figure comes to Rs. 8100/-. The total of both these amounts comes to Rs. 89,388/-. After making a deduction of 20 per cent, as was done by the Tribunal for lumpsum payment, the figure of which comes to Rs. 17877/- the amount of compensation payable to the claimant-Appellants in a round figure comes to Rs. 71,500/-. The appeal filed by the claimants, accordingly, deserves to be allowed to the extent indicated in this

judgment.

11. For the same reasons which we have given earlier the First Appeal From Order No. 313 of 1978, filed by Bishwanath Singh, the owner of the truck, deserves to be dismissed.

12. In view of the foregoing discussion First Appeal From Order No. 21 of 1978 filed by the claimants succeeds in part and is allowed with proportionate costs to this extent that the claim of the Appellants for recovery of Rs. 71500/- is decreed against the legal representatives of Late Bishwanath Singh, who was the owner of the truck, and against Babu Ram Respondent No. 2, who was the driver of the truck, together with simple interest at the rate of six per cent per annum from the date of making the claim petition till the date of the realisation of the amount of compensation. As against the Oriental Fire and General Insurance Co., the claim of the Appellants is allowed to this extent that out of the aforesaid amount of compensation a sum of Rs. 20,000/- which was its maximum statutory liability at the relevant time shall be paid by the said Insurance Co. to the claimant-Appellants. The balance of the amount of compensation shall be payable by the legal representatives of Late Bishwanath Singh, who was the owner of the truck, and by Babu Ram, Respondent No. 2, who was the driver of the truck.

13. First Appeal From Order No. 313 of 1978 is dismissed but the parties shall bear their own costs of this appeal.