
(1989) 09 MP CK 0050
In the Madhya Pradesh High Court
Case No : M.A. No. 355 of 1984

Nanjibhai Patel and Another

APPELLANT

Vs

Vishnu Prasad Sharma

RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1990) 2 ACC 45 : (1990) ACJ 982 : (1989) MPJR 866

Hon'ble Judges : Gulab Chandra Gupta, J

Bench : Single Bench

Advocate : Chanchala Sharma, for the Appellant; R.P. Verma, M.M. Sapre and T.C. Naik, for the Respondent

Final Decision : Allowed

Judgement

Gulab Chandra Gupta, J.

This is the claimants' appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against the award dated 8.8.1984 passed by Mr. R.K. Seth, Motor Accidents Claims Tribunal, Raipur in Claim Case No. 47 of 1981, awarding a sum of Rs. 12,000/-only to the appellants for the death of their son Govind Bhai in an accident caused by rash and negligent driving on 14.4.1981.

Since the respondents against whom the award has been passed did not file any cross-appeal or cross-objection it can be assumed that they do not seriously challenge the finding that Govind Bhai Patel died in the accident caused by rash and negligent driving. That the deceased was being carried as a passenger in jeep-taxi No. CPT1084 from Dhamtari to Raipur is not in dispute. That the said jeep met with an accident with the truck No. MPS 608 in which Govind Bhai Patel and one Jaikishan died, is also not in dispute. The accident took place because of negligent driving of the truck and the taxi is the finding recorded by the Tribunal which is not under challenge. The learned Tribunal has held that deceased Govind

Bhai Patel was about 24 years old and earning Rs. 300/- per month at the time of accident. He also held that the appellants were 47 and 45 years of age at that time. The learned Judge, however, fixed the dependency at Rs. 100/- per month and computed the same for 10 years and, therefore, fixed Rs. 12,000/- as compensation. It is this amount of compensation that is under challenge in this appeal. The submission of the learned Counsel for the appellants is that there is no justification whatsoever for calculating the dependency at Rs. 100/- per month nor was there any justification for computing the same for 10 years. It is, therefore, submitted that the compensation is abnormally low and deserves to be increased. Though no serious arguments were advanced on behalf of the owners of the vehicles, the learned Counsel for the insurance companies very strenuously urged that the liability of the insurance company is limited to Rs. 2,000/- for an individual passenger in view of Section 95 (2) of the Act. Relying on *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (SC), it is submitted that even if the vehicle was comprehensively insured, the liability of the insurance company would not exceed the said statutory limit.

As regards the amount of compensation, it has been the consistent view of this court that even if Section 92-A of the Act was not retrospective, it could be applied to all pending claims either before the Tribunal or the High Court. In *Shamsher Khan v. M.P. Electricity Board* 1988 ACJ 394 (MP) and the recent decision of this court in *Sardar Ishwar Singh, Truck Owner and Another Vs. Himachal Puri and Others*, , clarify this legal belief of this court beyond doubt. Under the circumstances, compensation for an accidental death u/s 110-B of the Act could not be less than Rs. 15,000/-. Since the awarded amount of compensation is less than the minimum, it is not possible to sustain the impugned award. What should then be the just compensation" u/s 110-B of the Act? That the deceased was the only bread-earner of the family which consisted of his wife and parents is apparent. Since the widow has remarried, the appellants have been rendered destitute. That the deceased was of 24 years of age indicates that he would have provided shelter to the parents during their lifetime which on a reasonable basis is estimated to be 65 years. True, the appellants could not be expected to survive for 65 years more and yet there is no reason why they should be expected to survive for 10 years more only. Considering the fact that the appellants are aged 47 and 45 years, the learned Tribunal seems to be thinking that they would survive only till the age of 57 and 55. This cannot be accepted as justified. It is well-known that life expectancy in India has increased considerably and is now about 60 years on the average. For this reason this court and other courts have taken the normal expectancy of life to be between 70 to 75 years. [See *Chameli Wati v. Delhi Municipal Corporation* 1982 ACJ 300 (Delhi); *Nan d Kaur v. Sukh Raj* 1981 ACJ 320 (Delhi); *Shiv Prasad Gupta v. S.M. Sabir Zaidi* 1967 ACJ 321 (Allahabad) and *Madhya Pradesh State Road Trans. Corporation v. Munnabai* 1967 ACJ 214 (MP)]. This was also the view of the Andhra Pradesh High Court in *Lanka Sarmma v. Rajendra Singh* 1984 ACJ 198 (AP). Under the circumstances, this court is not able to agree with the

learned Tribunal that the appellants would live only for another 10 years and would have got help from the deceased only for that period. Considering the age of the deceased, it is the considered opinion of this court that the appellants would have got his support at least for a period of 20 years, if not more.

This court is also not able to persuade itself to hold that the dependency of the appellants was to the extent of Rs. 100/- only. According to Nanji, PW 1, he has an income of Rs. 6,000/- per year of his own and used to get Rs. 200/- per month from the deceased. It would, therefore, appear that the total yearly income of the appellants was Rs. 8,400/- per year in which they maintained not only themselves but also the wife of the deceased who occasionally stayed with them. It is also clear that the deceased was earning a sum of Rs. 300/- per month out of which he paid Rs. 200/- to his parents. He was married very recently and his wife did not usually stay with the family for long. Taking these facts into consideration it would be reasonable to hold that the appellants were dependent on the deceased to the extent of Rs. 150/- per month. Considering the young age of the deceased, possibility of increase in his contribution to family expenses could not be ruled out. Under the circumstances, the dependency of the appellants will have to be assessed atleast at Rs. 1,800/- per year and multiplied by 18 which would be the proper multiplier in the instant case. In this view of the matter, the appellants would be entitled to an amount of Rs. 32,400/- as compensation. This in the opinion of this court would be the just compensation in the instant case. In *United India Insurance Vs. V. Jayaben*, , where the sole bread-winner of the family had died, compensation of Rs. 50,000/- was awarded. This court in *Jamnibai v. Chhotekhan* 1981 ACJ 90 (MP), considered Rs. 45,000/- to be the just compensation" for the death of a young man of 30 years of age earning Rs. 200/- per month. In this view of the matter, this court would increase the amount of compensation payable to the appellants to Rs. 32,400/- only.

The next and important question is about the extent of liability of the insurance company. *Jugal Kishore's* case 1988 ACJ 270 (SC), agrees with the court's earlier decision in *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co.* 1977 ACJ 343 (SC) and holds that "the insurer can always take policies covering risks which are not covered by the requirements of Section 95 of the Act." (Para 5). The court has, therefore, observed: "Even though it is not permissible to use a vehicle unless it is covered at least under an "Act only" policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured, a higher premium than for an "Act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf." In the context of these legal principles, the Supreme Court examined the policy and held that, "it is only the "vehicle" which was comprehensively insured, the insured's estimate of value including accessories (I.E.V.) thereof having been shown as Rs. 40,000/-". The

court, therefore, held that the policy did not cover any risk other than the one provided u/s 95 (2) (b) of the Act and hence its liability was limited to Rs. 20,000/- only. It is interesting to note that in spite of the aforesaid decision, the court permitted the claimants to retain the compensation of Rs. 1,00,000/-. Be that as it may, this judgment does not lay down any new law. It only re-emphasises the view that the parties can, by their agreement, cover a higher risk than provided in Section 95 (2) of the Act and that if the vehicle was insured for comprehensive risk the liability of the insurance company would exceed the ceiling fixed by the aforesaid provision. In view of this law, the facts of the case may be examined.

Fortunately for us, a true copy of the insurance policy has been filed and is on record as Exh. NA-1. Unlike the policy in Jugal Kishore's case 1988 ACJ 270 (SC), which covered comprehensively the vehicle alone, this policy covers "comprehensive risk" which must be accepted as its distinguishing feature. In Jugal Kishore's case (supra) policy premium paid for passengers was Rs. 2.50 only. But in the instant case, it is Rs. 8.50 per passenger. In the column dealing with limits of liability in Exh. NA-1, it is provided that the company's liability u/s II-I (i) and Section II-I (ii) would be Rs. 50,000/-. These Sections indicate the liability in relation to third parties and indemnify the insured against all sums to which the insured shall become legally liable in respect of the death of any person caused by or arising out of the use of the motor vehicle. In Jugal Kishore's case (supra), the liability u/s II-I (i) was limited to such amount as is necessary to meet the requirements of the Act, which is not the present case. If the submission of the learned Counsel for the insurance company that typed Rs. 50,000/- should be read in relation to liability u/s II-I (ii) is to be accepted, it would make the liability u/s II-I (i) unlimited in the absence of any limitation about it in this clause. In view of the wordings of Section II-I (ii) and the "comprehensive risk" cover by the policy, the present award of Rs. 32,400/- would be covered by the policy in any case and the respondent insurance company would be liable to pay the same. In this view of the matter, it is not possible to agree to the submission that the liability of the insurance company was limited to statutory limit. The fact that the insurance company has already accepted the award making it liable for an amount of Rs. 12,000/- is itself indicative of the fact that the question of limits of its liability was not canvassed before the Tribunal. Be that as it may, since it was a question of law and concerns the increased liability being imported by this court, it deserved serious thought and consideration.

Yet another question requiring consideration of this court is about the rate of interest. The learned Tribunal has awarded interest at the rate of 6 per cent per annum which, according to the learned Counsel for the appellants, is contrary to the decisions of this court. This court in *Lachiyabai v. Darshan Singh Punjabi* 1988 ACJ 920 (MP), has held that rate of interest cannot be less than 12 per cent per annum in view of the Section 110-CC of the Act. This is also the view of this court in *State of M.P. v. Ashadevi* 1988 ACJ 846 (MP). Both these decisions being

the decisions of Division Benches, there is no reason why they should not be followed. Under the circumstances, this court is not able to accept 6 per cent as the proper rate of interest and awards interest at the rate of 12 per cent per annum on Rs. 32,400/- from the date of application, i.e., 12.10.1981, till realization.

As a result of discussion aforesaid, the appeal succeeds and is allowed by modifying the impugned award and declaring that the appellant-claimants are entitled to Rs. 32,400/- as compensation for the death of their son Govind Bhai Patel from respondent Nos. 1 to 6 jointly and severally together with interest at the rate of 12 per cent per annum from the date of application, i.e., 12.10.1981 till realization. The appellants shall also be entitled to costs of this appeal from the respondents. Counsel's fee is assessed at Rs. 1,000/- (one thousand only).