

(1983) 11 BOM CK 0017

In the Bombay High Court

Case No : First Appeals No"s. 372 and 373 of 1980

Nav Bharat Builders and another

APPELLANT

Vs

Pyarabai and others

RESPONDENT

Date of Decision : 22-11-1983

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 306(3), 306(4)
Motor Vehicles Act, 1988 — Section 110AA, 110B

Citation : (1984) 2 ACC 424 : (1985) ACJ 79 : (1984) 2 BomCR 9 : (1986) 60 CompCas 87

Hon'ble Judges : V.S. Kotwal, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

C.S. Dharmadhikari, J.—This is an appeal filed by the owner of the vehicle and the insurance company against the award passed by the Motor Accidents Claims Tribunal, Sangli, dated December 12, 1979. It is not disputed that the deceased, Jagannath, died in a motor accident, which took place on October 17, 1978, on the National Highway known as Bangalore-Pune Road. It appears that the deceased, Jagannath, was sleeping on the road and the motor truck owned by appellant No. 1 was coming from Kolhapur side and was proceeding to Pune on October 17, 1978. Therefore, it is also not disputed that to some extent then negligence of the deceased in sleeping on the road was responsible for the accident.

2. The Motor Accidents Claims Tribunal has assessed contributory negligence of the deceased, Jagannath, to the extent of twenty-five per cent. The learned member of the Tribunal after appreciating the evidence on record came to the conclusion that the driver of the truck was driving his vehicle negligently as well as rashly and because of his rashness, he could not control the vehicle and, therefore, the accident took place. This finding is also not challenged in this appeal. What is challenged in the appeal is only the quantum of compensation as awarded by the Tribunal. Deceased, Jagannath, was studying in II year B.A. class at the time of his death. He was also getting a scholarship of Rs. 1,200 per

annum. He was also conducting coaching classes. The learned member of the Tribunal came to the conclusion that the income of the deceased, Jagannath, at the time of his death was around Rs. 200 per month and being a student, he was handing over his income to his mother. So far as future income of Jagannath is concerned, the learned member found that he would have normally earned Rs. 400 to Rs. 500 per month by serving in some Government Department or elsewhere and would have given at least Rs. 200 per month to his mother. Mother of the deceased was 55 years old and, therefore, she would have received income from her deceased son for at least about 20 years. Therefore, learned member assessed damages at Rs. 48,000. To this an amount of Rs. 6,000 was added being the amount of general damages. The learned member deducted 25 per cent from this amount towards contributory negligence of the deceased, Jagannath, and, ultimately, passed an award of Rs. 40,500. It is this award which is challenged in this appeal by the appellants. Mr. Chaphekar, learned counsel for the appellants, contended before us that the deceased, Jagannath, could have contributed Rs. 200 per month to his family for the first seven years, but thereafter he could have continued to do so because in all probability he would have married. In that case, it is difficult to hold that he would have continued to contribute Rs. 200 per month. Learned member should have held that after marriage, Jagannath could have contributed Rs. 150 only towards family expenditure. The mother of the deceased was 55 years old at the material time and, therefore, even after taking into consideration the estimated increases in the average longevity of life, she would have received this amount for another 15 years only. Therefore, according to Mr. Chaphekar, even if the findings recorded by the trial court are accepted, then also the total compensation cannot exceed Rs. 32,000. It was not possible for the learned counsel for the respondent to dispute this position. With the assistance of the learned counsels appearing for both sides, we have gone through the material evidence on record. After taking into consideration the net annual income of the deceased by dint of his labour, manual or of head and heart, the amount he would have spent for himself and for his dependents, and the expectancy of life of his dependent mother, we have no hesitation in coming to the conclusion that the compensation in the present case cannot exceed Rs. 32,000. Hence, the award passed by the Claims Tribunal is modified and is substituted by Rs. 32,000. The order regarding payment of court fee also stands suitably modified. Original opponents Nos. 1 to 3 to pay the court fee on the amount of Rs. 32,000 and the respondent - original petitioner - to pay court fee on the remaining part of the claim made and dismissed.

3. From the record it appears that the amount awarded by the Motor Accidents Claims Tribunal is already deposited in the court and thereafter is invested in a nationalised bank and the claimants paid interest thereon regularly. This was an interim arrangement made by this court during the pendency of the appeal. Since the appeal is being partly allowed, the claimant will be entitled to Rs. 32,000 towards compensation and the balance of Rs. 8,500 could be withdrawn

by the appellants. However, this is not the end of the matter, as the Motor Accidents Claims Tribunal will have to pass necessary consequential orders regarding investment of the amount, in accordance with law. In this context we would like to draw the attention of the Tribunal towards the amendment to rule 306 of the Bombay Motor Vehicle Rules, 1959. This said rule stands amended from January 31, 1983. By this amendment sub-rules (3) and (4) were inserted in rule 306 of the Rules, which read as under :

"(3) Where any lump sum deposited with the Tribunal is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during his disability in such manner as the Tribunal may direct, and where a quarterly payment is payable to any person under the legal disability, the Tribunal may of its own motion or any application made to it in that behalf, order that the payment be made during the disability of the person concerned to any dependant of the injured or heir of the deceased or to any other person whom the Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased.

(4) Where on an application made to the Tribunal in this behalf or otherwise, the Tribunal is satisfied that on account of the neglect of the children on the part of the parents or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Tribunal, as to the distribution of any sum paid or compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Tribunal may make such orders of the variation or the former order as it thinks just in the circumstances of the case."

4. These sub-rules are in pari materia to sub-section (7) and (8) of section 8 of the Workmen's Compensation Act. In this context, it is worthwhile to note that by section 110AA of the Motor Vehicles Act, an option is left open regarding claims for compensation covered by the Motor Vehicles Act and the Workmen's Compensation Act. It cannot also be forgotten that provision for payment of compensation was introduced in the Motor Vehicle Act primarily to safeguard the interests of the dependents of the deceased. Therefore, it is the duty of the Tribunal to see that the dependents do not fall a prey to machinations or be subjected to deceit or fraud. Provision for payment of compensation is part of a social security scheme and the dependents cannot be permitted to be robbed by anti-social elements. This is more so, because many times dependents are from the lower strata of society, are illiterate and ignorant of their rights and have no chance in life to see or handle such a big amount. Therefore, they are not able to understand what is in their best interest. In such circumstances it is the duty of the Tribunal to assist and guide them. Section 110B has used the expression "compensation" and not damages. It empowers the Tribunal to determine "just compensation" and specify a person or persons to whom compensation shall be paid. This determination is known as award. Loss of life cannot be measured in terms of money nor the loss of life of main bread-earner can be fully

compensated. However, while determining the just compensation, the loss to the claimant of future pecuniary benefit is relevant. Therefore, while determining the compensation, sometimes it is taken into consideration as to how much interest will be earned on the lump sum awarded. The reason for this is obvious. A prudent man receiving lump sum amount, so as to make good his loss over a period, is expected to invest it and to use it gradually. The word "just" used in section 110B has wider import. Therefore, in our view, the use of expressions like "just compensation" and "award" is indicative of the intention of the legislature. It is implicit in these expressions that the Tribunal is duty bound to act in a just and reasonable manner so that the fruits of the award will reach the dependents. Since the Act has conferred jurisdiction upon the Motor Accidents Claims Tribunal to determine just compensation and specify the person or persons to whom it shall be paid, it impliedly also grants the power of doing such acts, or employing such means as are essentially necessary to achieve the said purpose. Jurisdiction and power conferred upon the Tribunal to award just compensation are coupled with a duty. While passing an award for compensation, the Tribunal is duty bound to guard the interests of the dependents for whose benefit it is made. The Tribunal cannot act as an onlooker, but is duty-bound to pass consequential orders to protect the dependents from exploitation, malpractices and misapplication of compensation money. This seems to be the reason why by an interim order this court directed that the amount deposited should be invested in a nationalised bank and the interest thereon should be paid to the claimant. Nature of consequential order will obviously depend upon the facts and circumstances of each case and not general rule can be laid down in that behalf. Any rule framed or guidelines laid down can never be exhaustive. However, we generally agree with the guidelines laid down by the Gujarat High Court in *Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others*, , Broad guidelines as laid down by the Gujarat High Court read as under (at p. 60).

"(i) The Claims Tribunal should, in the case of minors, invariably order that the amount of compensation awarded to the minor be invested in long-term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also, the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons, the Tribunal should ordinarily resort to the procedure set out in (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in (ii) above for

earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also, the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order;

(v) In the case of widows, the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases, if further treatment is necessary, the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long-term fixed deposits is made, it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases the Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that, if need be, one such F.D.R. can be liquidated."

5. These guidelines are not exhaustive but are merely illustrative. These guidelines are also in addition to and not in derogation of sub-rules (3) and (4) of rule 306 of the Bombay Motor Vehicles Rules. We, therefore, direct the Accidents Claims Tribunal to consider the case of the present claimant, who is a woman belonging to the backward class community, in the light of the relevant rules and aforesaid guidelines, and then pass an appropriate order. Obviously, such an order will have to be passed after giving an opportunity of being heard to the claimant.

6. In the result, therefore, the appeal is partly allowed. The amount of compensation is reduced to Rs. 32,000. However, in the circumstances of the case, there will be no order as to costs. The parties will now appear before the Accidents Claims Tribunal for seeking appropriate consequential orders regarding investment, etc., of the compensation amount and payment of court fees.