

(1984) 09 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 71 of 1982

New India Assurance Co., Alwar and Another

APPELLANT

Vs

Ram Dayal and Others

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 95(1)

Citation : (1986) ACJ 464 : AIR 1986 Raj 18 : (1985) 1 WLN 461

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Advocate : R.K. Bhargava, for the Appellant; H.C. Rastogi and J.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Guman Mal Lodha, J.—This appeal has been filed by the New India Assurance Company, Branch Office, Alwar, the insurer and Madan Lal Saini, the owner of the vehicle, truck No. RJA 5088 involved in an accident which took place on 9th March, 1979 near Station Road, Alwar, by which Dhanniram, the deceased, aged 18 years, was knocked down. Nasru Khan, the respondent No. 3, was the driver of the truck. Dhanniram died on account of the injuries sustained during the accident and the Tribunal has found that the driver was driving the truck rashly and negligently, on account of which the accident took place.

2. Before the Tribunal, after the evidence was recorded, the Tribunal awarded an amount of Rs. 21,000/- to the claimants, namely, Ramdayal father and Smt. Umrawati, mother of Dhanniram deceased.

3. Before this Court, in this appeal, cross-objection has also been filed by the father and mother of the deceased who are aggrieved by the compensation awarded in their favour as according to them, it is grossly inadequate.

4. Shri S.M. Bhargava, who has argued the case on behalf of the appellants, has emphasised that the truck was not in the ownership of Madanlal Saini at the

relevant time of the accident as it has been sold to Nasru Khan, long before. It was argued that the sale took place on 1st Dec., 1978 and Nasru Khan admitted that he was the owner of the truck. Shri Bhargava further submitted that in view of this, the insurance policy ceased to be effective because it was in the name of Madanlal and, therefore, the compensation claimed cannot be indemnified by the insurer.

5. Shri Rastogi, H.C., the learned counsel for the claimants, has opposed these submissions of Shri Bhargava. According to him, no satisfactory evidence of sale has been produced. There is no document in writing and no preciseness about the terms of the sale has been shown. No application was moved for transfer of the vehicle in the name of Nasru Khan by Madanlal Saini nor Nasru Khan moved an application for it. The registration certificate continues to be in the name of Madanlal and so also the permit of the vehicle.

6. Shri Rastogi further submitted that the Insurance Company has not explained as to how they renewed the vehicle in the name of Madanlal Saini and who filled in form in the name of Madanlal and, the theory being incorrect, Shri Rastogi submitted that the finding of the Tribunal on the point of transfer requires no interference. I am inclined to accept the contention of Shri Rastogi as, I am in agreement with the finding of the Tribunal. In my opinion, unless the clinching proof is given of such a transaction, the liability of the Insurance Company cannot be avoided, only by creating smoke screen of transfer. There is no such evidence in the present case, as rightly pointed out by Shri Rastogi and correctly found by the Tribunal.

7. I have already held in United India Fire and Genl. Ins. Company"v. Bal Krishna (Civil Misc. Appeal No. 103/77 decided on 31st Aug., 1984) that, in such cases, the registered owner cannot be absolved and exonerated of his liability, and the Insurance Co. would be liable to indemnify the registered owner. The above view is based on the earlier decision of this Court in Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others,

8. In view of the above, I am not inclined to accept the appeal as the only point pressed in the appeal is untenable.

9. Now coming to the cross-objection of the claimants, a detailed legal debate was allowed because of paucity of judgment of this Court on the question as to what criteria or formula should be adopted in case of determination of the compensation when the fatal accident is of a young boy who is not earning at the time of death. Shri Bhargava very fairly pointed out the various decisions on this point. Shri Bhargava invited my attention to the decision of the Apex Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, In C.K.S. Iyer v. T.K. Nair, earlier decision of Supreme Court was referred to Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, and the law on the point arising for decision may be summed up thus :

"Compulsory damages u/s 1A of the Act for wrongful death must be limited

strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. 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. In the matter of ascertainment of damages, the appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration."

"15. Now applying the above rules to the facts of the present case, it is seen that the deceased child was only 8 years old at the time of his death. How he would have turned out in life later is at best a guess. But there was a reasonable probability of his becoming a successful man in life as he was a bright boy in the school and his parents could have afforded him a good education. It is not likely that he would have given any financial assistance to his parents till he was at least 20 years old. As seen from the evidence, on record, his father was a substantial person. He was in business and his business was a prosperous one. As things stood he needed no assistance from his son. There is no material on record to find out as to how old were the parents of the deceased at the time of his death. Nor is there any evidence about their state of health. On the basis of the evidence on record, we are unable to come to the conclusion that the damages ordered by the High Court are inadequate."

10. The deduction to be drawn from the above decision is that no fixed criteria for measuring the value of human life in such cases which can be evolved, and certain amount of conjectures is to be tolerated in this field of law. All that was evolved as principle of law in that case was that while assessing the damages, the Court must exclude all considerations of matters which rest in speculation or fancy though conjecture to some extent is inevitable.

11. The present cash value of the prospective service of the deceased minor child in addition to compensation for loss of pecuniary benefits reasonably expected after the boy starts earning, should be normal criteria in such cases.

12. It was conceded and realised by the Apex Court that how a boy would turn out in life later is at best a guess in spite of being a very bright boy or whether he becomes successful man in his life; would all have to be guessed.

13. In that case, it is to be noticed that there was no evidence, how the old parents were, and the Apex Court in view of that, upheld the finding of the Tribunal.

14. Shri Bhargava has invited my attention to the decision of Mysore High Court in *Government of India v. Jeevaraja Alva* 1970 ACJ 221 : (AIR 1970 Mys 13) wherein in case of death of boy aged 10 years, Rs. 5000/- were allowed for loss of expectation of life of the deceased. In *Mohd. Muzzafar v. Mohd. Sultan Sheikh* 1980 ACJ 516, Jammu & Kashmir High Court in the case of death of boy aged 11 or 12 years, a student of 5th class in a school which has a good academic reputation, and father was of 60 years, (compensation?) enhanced from Rs. 10,000/- to Rs. 25,000/-.

15. Madras High Court in *G. Parvathi Ammal v. Pallavan Transport Corporation Ltd.*, 1984 Acc CJ 342 where a boy of 18 years reading in B.A. (was involved?) in an accident, enhanced the compensation amount from Rs. 17,900/- to Rs. 30,000/-.

16. Gujarat High Court in *Chaturbhai Jivabhai v. Dayabhai Lallubhai Patel*, 1984 Acc CJ 233, allowed Rs. 8,600/- in the case of accidental death of 19 years old boy. Punjab and Haryana High Court in *Zabar Singh v. Pirthi Chand*, 1984 Acc CJ 125 allowed Rs. 25,000/- in the case of death of 16 years aged boy. Punjab and Haryana High Court in *Indian Mercantile Ins. Co. v. Mehnga Singh*, 1983 Acc a 229 allowed Rs. 16,800/- in case of death of 18 years aged boy and the Madhya Pradesh High Court in *Ramesh Chandra and Others Vs. Madhya Pradesh State Road Transport Corporation, Bhopal and Others*, allowed Rs. 18,000/- in the case of death of 18 years aged boy who was reading in I.T.I.

17. Shri Bhargava further submitted various authorities in which usually the principle laid down and followed by the Courts is that they normally allow compensation on the expectancy of income for dependency of parents till the boy attains the age of majority and marriage, after deducting his personal expenses. While doing so they take the age of the deceased boy and the age of the parents, into consideration.

18. Shri Rastogi, on the contrary, submitted that the old view or the view where the compensation is allowed only by calculating the amount till the expected marriage, is now outdated and obsolete and, according to him, on marriage though the income is shared by the children and the wife but the income of the person also increases as per his experience and promotion which he gets from time to time. Shri Rastogi further argued that the expectancy of the age of the parents in the modern age when there has been great advancement in medical science has increased and even the Courts had recognised it to be 70-75 years.

19. In support of his contention Shri Rastogi pointed out the decision of the Gujarat High Court (DB) in *Mangaldas Mohanlal Patel and Another Vs. Union of India and Another*, India 1982 ACJ 426 : AIR 1982 Guj 257) wherein the boy aged 13 years while reading in 7th Class, died in the accident. The Tribunal allowed Rs.

21,000/- but on appeal, the High Court was inclined to increase it to Rs. 54,000/- but could not do so because the prayer was only limited to 31,000/- rupees. The father of the boy, at that time, was 40 years of age. In *Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi*, 1983 Acc CJ 666, their Lordships of the Bombay High Court in the case of death of boy aged 16 years, awarded Rs. 50,000/-, although the Tribunal has allowed Rs. 31,400/-.

20. The Delhi High Court in *Chameli Wati and Others Vs. Delhi Municipal Corporation and Others*, treated the age of parents as 70 years or 75 years and allowed Rs. 38,522/- when the age of the parents at the time of the accident was 25 years of age. The Delhi High Court in *Hazarilal v. Dharam Pal Singh* 1981 ACJ 439: (AIR 1981 NOC 238) in the case of death of student aged 17 years in appeal enhanced the award to Rs. 22,000/- from Rs. 10,000/-.

21. Before I proceed to determine the amount of damages or compensation which is to be awarded in the present case, I must mention at the very outset that I am conscious of the limitations laid down by the Apex Court that it should not be speculative, although the Apex Court itself was alive and conscious of the hard reality that some element of conjectures is inherent in the claim cases.

22. I must add that the important salient feature which should be kept in mind by the Accident Claims Tribunal in all such cases is that the compensation though permissible according to the provisions of the Fatal Accident Act, is to be determined as per the legislative trends. What Justice Holmes observed, much earlier, that the Courts should be alive and should not be oblivious to the felt necessities of times and the social trends is to be kept in mind with much more emphasis by the Indian Courts, whereas in the country of Justice Holmes there are several civil laws providing for social security and protection to the old aged parents, in the developing country. In India on account of the poor resources, we have not been able to divert our funds for such social security schemes though there has been taken symbolic beginning which can be termed as negligent, so far, only.

23. In the fatal accident of young boys, who normally are educated and nourished by the parents as the future light in the dark home of their old age and, the only source of bread and shelter when they become old and infirm and cannot earn either on account of the retirement from service or on account of the failing health, the boys are nourished by the parents by spending lion's share of their income to make them prospective bread earners for them and a source of exclusive dependency on them. In view of these, social conditions of our country, the loss of bread earner for parents is not to be considered on the principles laid down by the English Courts or American Courts where there are old age Homes, the old aged social security schemes, and lodges.

24. On a careful going through the above decisions, I find that this particular concept has not been highlighted so far in the most of the cases and commercial approach of the British Courts which used to weigh every case of the present

nature allowed in terms of the Civil Suit, has been taken as guidelines in some of the cases. In my considered view, that approach has become obsolete and outdated. Undoubtedly, we are living under a Constitution given to ourselves by the people where the Preamble, itself, ensures and promises "social justice". The accident claims should be treated as belonging to the discipline and branch of social welfare legislation of this country and should be interpreted liberally in favour of the sufferers so that they get damages or compensation and are relieved of the anxiety of their old age which has been caused to them on account of the unfortunate accident.

25. In the above background, I am inclined to adopt the view taken by Gujarat High Court in *Mangaldas Mohanlal Patel and Another Vs. Union of India and Another*, and which is also nearer to the latest view taken by Bombay High Court in *Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi* (1983 ACJ 666) (supra) and, Delhi decision in *Chameli Wati and Others Vs. Delhi Municipal Corporation and Others*,

26. In my opinion, none of these judgments go outside the limits and restriction or guidelines given by the Apex Court in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*,

27. One important feature of the above decision is that in other cases in which expectancy of the parents depends upon the deceased, the income is put to a "full stop" with his marriage and the calculation is done of the income normally which they would derive till he is married. The above principle, in my opinion, is completely untenable. In fact, the start of the career of a young person on the completion of the education and the qualification or, attains initial expression, starts only at an age of 20 to 25 years and the normal age at which the people are married depending upon different customs is also the same. In my view, it is only when youth attains the age of 30 or 35 and he is in 40 when he reaches height of his income which mostly increases in fifty, also. In the normal course, in cases of employees or officers or servants the maximum income is at the time of retirement which is normally at 58 or 55 years or, 60 to 62 depending upon the nature of the employment. The business executive or businessman or professional is at the top in the sixty. The best of the advocates or doctors usually obtains heights in sixty or seventy and so also is the case of other professions where by experience, expertise knowledge gives the maximum figure of the income of person in his advanced age. Such being the condition of the society, I am surprised, how and why the age of marriage has been treated as the age when a "full stop" is to be put to the expectancy of income by the parents and the calculation is done on that basis. Whatever deduction there would be on account of sharing of the income by wife and children after marriage would be squared up by increase in income after the marriage on the subsequent growth of age and the maturity.

28. In my considered opinion, all have above decisions where the expectancy of the income has been limited till the year one is expected to marry and, also,

where the income is to be calculated on the basis of the income which a beginner will have; suffers from serious fallacy of failing to take notice all the above important speaking circumstances of the social life which requires no evidence or proof in the individual cases. It may also be noticed by the Courts and the Tribunal that in Indian conditions, the parents expect their sons to support them till they breathe last and even in the worst time of ailment of old age. It would, therefore, be impossible to draw an analogy of our Indian condition with that conditions prevailing in England or America or other western countries where as soon as a young boy grows up, he severes with the family and the parents cannot expect support in their old age where they solely depend upon the old age homes, the institutions of the Government or semi government agencies.

29. In the instant case, Dhanniram was 18 years of age and undoubtedly a bright boy having obtained third position in merit in Higher Secondary at the time when on account of the unfortunate accident he was taken away from the parents and all expectations of the future light (life?) was lost and the bright home became dark.

30. I would not disturb the finding of the Tribunal. Normally he would have started at Rs. 300/- per month after three years of more education, and the benefits of which the parents have been deprived, would have been on an average at Rs. 200/- per month. However, I am not prepared to accept the finding of the Tribunal that this would start after 6 years because for three years, the parents will have to spend lion share of their income on children education which would have been squared up for another three years. When the parents nourish their children and give them education in Indian condition then they never maintain the trial, balance or balance sheet for getting back the amount spent on education as it is not a commercial phenomenon in our country.

31. I would, therefore, hold that after completion of the graduation, the boy would have started earning and since the mother was of 47 years of age only at the time of the death of the boy, she would have expected pecuniary benefits of this amount throughout the life and would have shared it with her husband -- father of the boy, who was of 51 years of age at that time.

32. The child mortality has decreased and the growth and progress of the medical science and the expansion of the medical health schemes throughout the country by the Government, under which the network of small hospitals, have been expanded to small villages, even, the expectancy of the age has consequently grown up. Shri Bhargava, very fairly and frankly agreed that in the present age, even in Indian conditions, the expectancy of the life is normally up to 70 years. In *Chameli Wati and Others Vs. Delhi Municipal Corporation and Others*, the High Court has accepted that the expectancy of the age is 70 to 75 years.

33. I would have expected from the learned counsel for the parties to supply

some government published data on this point but in the absence of that, I am inclined to accept the view taken by the Delhi High Court in *Chameli Wati v. Delhi Municipal Corporation* (supra) and, hold that the expectancy of the life of mother and father of the deceased-Dhanniram would be 70 years. Even if one of them dies earlier depending upon the contingency, the other would get the entire benefit. In view of this, the expectancy of the income would be Rs. 2400/- per year and since the mother at the time of death was of 47 years of age, she would be getting benefit for 20 years at least from the time Dhanniram can start earnings. I have already held that either of the parents may die earlier but, one may survive more than 20 years also and therefore, without specifying individual case, I am adopting multiple of 20 years expected dependency income of Rs. 2400/- per year which comes to Rs. 48,000/-.

34. The result of the above discussion is that the compensation of Rs. 21,000/- is increased to Rs. 48,000/- in favour of the claimants and the cross-objection is accepted accordingly. The claimants would get 6% interest from the date of application till the date of realisation.

35. This appeal is dismissed and the cross-objection is allowed with costs. The impugned award is modified to the extent above.