

(1993) 05 GAU CK 0014
In the Gauhati High Court
Case No : M.F.A. No. 11 of 1989

Nirupama Rajkumari and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-05-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1994) ACJ 479

Hon'ble Judges : U.L. Bhat, C.J.; R.K. Manisana Singh, J

Bench : Division Bench

Advocate : C.K. Sharma Barua, C. Gopal and G. Misra, for the Appellant; S.N. Chetia, Addl. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

U.L. Bhat, C.J.—This appeal has been filed by the claimants in M.A.C.T. Case No. 7 of 1982 of the Motor Accidents Claims Tribunal, Jorhat. We have heard learned counsel for the appellants and learned Additional Central Government Standing Counsel representing the respondents.

2. On 18.10.1981 Rajkumar Dilip Narayan Singha was returning home from Chinnamora Bazar on scooter No. DHW 7813. He was moving along his left side of the road at a slow speed. When he reached Jakhalapar at about 8.15 a.m., a jeep No. NLP 3363, belonging to first respondent, used by the second respondent and driven by the third respondent, came from the opposite side at an excessive speed in a rash and negligent manner and hit the scooter and the rider and caused injuries to him and damage to the scooter. The injured was taken to the Jorhat Civil Hospital, but he succumbed to the injuries at 3.30 p.m. On these allegations a sum of Rs. 10,00,000/- was claimed as compensation. The claim was resisted by the respondents. The Tribunal held that the accident was a result of rash and negligent driving of the jeep and awarded compensation of Rs. 80,000/- to be paid without interest within three months and if not paid within the period, to be paid with interest of 15 per cent per annum till final payment.

Rs. 500/- was awarded as costs. Compensation was divided equally between the two claimants. Appellants being aggrieved by what they allege to be inadequacy in the award have filed the appeal.

3. Learned counsel for the appellants has urged two contentions before us:

(a) Tribunal did not follow any recognised method of fixing the compensation and should have adopted the multiplier method, adopting multiplier of at least 25 and fixed the compensation on that basis.

(b) Tribunal erred in not awarding interest from the date of the application.

Learned Additional Central Government Standing Counsel rebutted the above contentions and contended that the amount awarded is reasonable considering that the Tribunal fixed an excessive amount as contribution and ignored uncertainties of life.

4. Learned counsel for the appellants strenuously pleaded for enhancement of the quantum relying on the decision in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, The case " related to death of an Army Major, aged 36 years, leaving a young widow, two minor sons and a minor daughter. He had a monthly salary of Rs. 2,200/-. Tribunal assessed dependency at Rs. 1,100/- per month or Rs. 13,200/- per year, estimated his span of life as 56 years and adopted a multiplier of 20, deducted one-third on account of lump sum payment and fixed the compensation at Rs. 1,76,000/-. The Supreme Court fixed the monthly dependency at Rs. 1,400/-, the life span to be 70 years, set aside the deduction of one-third on account of lump sum payment due to lapse of 15 years after the accident, adopted a multiplier of 24 and fixed the compensation at Rs. 4,03,200/-. A careful study of the judgment shows that the Supreme Court did not purport to lay down any rigid or general principle of invariable application to all cases irrespective of the facts and circumstances.

5. I (1993) ACC 345 (SC) related to accidental death of the victim aged 26 years leaving behind his old father, 21 years old widow and a minor daughter. The deceased was an employee earning net salary of Rs. 384.70 per month. Tribunal estimated dependency at Rs. 150/- per month, adopted 17 as the multiplier, deducted 15 per cent on account of lump sum payment and uncertainties of life, ignored the future increments of the deceased, took into consideration the chance of remarriage of the widow and awarded Rs. 26,000/- as net compensation. The Supreme Court fixed the dependency at Rs. 300/- per month, took note of the youth of the deceased and the fact that the Tribunal did not give any allowance for future increments and his promotional chances and the fact that no compensation was awarded for loss of consortium and adopted 24 as a multiplier. The Supreme Court did not deduct any amount on account of lump sum payment in view of lapse of 15 years. However, the Supreme Court did not interfere with the interest awarded at the rate of 9 per cent.

6. In the case of a deceased doctor aged 34 years, the Supreme Court in Gobald

Motor Service Ltd. v. R.M.K. Veluswami 1958 ACJ 179 (SC), indicated a multiplier of 8 as moderate though conservative. In Municipal Corporation of Delhi v. Subhagwanti 1966 ACJ 57 (SC), the court upheld the adoption of a multiplier of 15 in regard to three deceased persons who died in their youth leaving behind young widows and minor children. Adoption of a similar multiplier was upheld in Sheikhpura Transport Co. Ltd. v. Northern India Transporters Ins. Co. Ltd. 1971 ACJ 206 (SC). Multiplier of 10 was adopted in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC). In Rajendra Kumari v. Shanti Trivedi 1989 ACJ 517 (SC), award of Rs. 1,00,000/- to young widow and minor son was held to be reasonable though dependency was Rs. 6,000/- per year and the deceased would have lived for another 35 years, that is, though the contribution would have been Rs. 2,10,000/- for 35 years.

7. Thus it can be seen that the Supreme Court did not in any case lay down any general or rigid principle which is to be followed in all cases. Each case depends on its own facts.

8. Compensation to be awarded, as indicated in Section 110-B of the Motor Vehicles Act, 1939 (for short "the Act") must be just. The Tribunal is generally guided by principles of law of Torts in the matter of quantification of compensation in the light of the facts and circumstances of a particular case. [See Rashbihari Prasad v. Parbati Media, M.A. (F) No. 15 of 1986; decided on 21.1.1993 (Gauhati)]. In case of fatal accidents the dependent legal representatives may claim general and special damages. A claim based on loss to the estate is also admissible though duplication has to be avoided. In the case of bread-winner or a future bread-winner, one of the heads of claim is based on the pecuniary loss sustained by the dependants, that is, the present value of the future benefits which they have been deprived of by the premature death of the bread-winner. Compensation is to be based on pecuniary benefits or benefits reducible to money value. The Supreme Court in Veluswami's case 1958 ACJ 179 (SC), referred to the principle restated by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd. 1951 AC 601 as follows:

...at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime, and other circumstances; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate; and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position.

9. Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601 observed:

...The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

10. The Supreme Court in *Sudhakar's case* 1977 ACJ 290 (SC), observed:

...But in assessing damages certain other factors have to be taken note of which the High Court overlooked, such as, the uncertainties of life and the fact of accelerated payment?that the husband would be getting a lump sum payment which, but for his wife's death, would have been available to him in dribblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors.

11. It can be safely indicated that there cannot be any strict Rule or rigid formula in the matter of determining the present value of future benefit. The life spans of the deceased and of the dependants have to be estimated having regard to a variety of factors. The income of the deceased at the time of his death and future prospects in the normal course, which itself may be subject to a variety of factors, has to be estimated. In the case of a person with a regular job on a scale of pay with or without promotion avenues and subject or not subject to regular pay revisions, there may be useful data available. But in other cases assessment of future prospects is indeed a difficult task. Possible date of retirement is relevant though it does not necessarily mean that the person on retirement would cease to earn income as he may engage himself in post-retirement activity. Persons who are dependent on the deceased at the time of his death may not continue to be so throughout his span of life. Young widows or widowers may remarry. Sons will grow up and start earning. Daughters will grow up and either get married or start earning and cease to be dependants. Patents and spouses and at times even children may have their own income and may not be dependent or entirely dependent on the deceased. Having regard to all these factors the extent of the income of the deceased which is to be taken as being spent or likely to be spent on the dependants has to be assessed. In doing so, regard must be had to the nature of the work of the deceased and the extra expenses he may have to bear in that connection. The possibility of change in

income and change in dependency has to be considered. Dependency has to be decided having regard to all these factors.

12. In the multiplier method the importance of fixing an appropriate multiplier cannot be minimised. It depends on the earning life span of the deceased and the period during which the claimants are expected to be dependent on him. The multiplier may not always be equal to the number of years during which the deceased may have earned but for the accident. There are uncertainties of life which may cut short the life of the deceased or of the dependants, or prevent the deceased from earning. Compensation awarded is a lump sum instead of dribblets which the deceased might spend on the dependants had he been alive. Payment is accelerated and allowance had to be made in this regard. Regard must be had to the effect of inflationary pressure on the value of money. A suitable multiplier has to be fixed having regard to all relevant circumstances. [See *State Insurance Officer, Trivandrum v. Thankamma John* 1981 ACJ 77 (Kerala)].

13. It deserves notice that when lump sum compensation is awarded, it is available for investment by the awardees with the result that they can enjoy the income or interest from the amount and at the same time keep intact. This had led some Judges to adopt the actuary principle. [See *Vasanthi G. Kamath v. Kerala State Road Transport Corporation* 1981 ACJ 353 (Kerala) and *Bhagawan Das v. Mohd. Arif* 1987 ACJ 1052 (AP)]. In this method, the multiplier is arrived at after a complicated calculation, the end result of which is to ensure that the lump sum compensation paid would cease to exist at the end of the estimated life span of the deceased or at the end of the period of dependency of the claimants. This method is based on the supposed investment of the lump sum amount in such a manner that the interest as well as part of the principal would be made use of, to make monthly contribution to the dependants so that the lump sum would disappear as stated above. If the actuary's multiplier is adopted there is no need to deduct any percentage for accelerated payment, but it does not take into consideration imponderables of life and the effect of future inflation. There is a view that this method is scientific, but we think it is too rigid and leaves no scope for play at joints. Applying any rigid principle may not help us in arriving at a just compensation. We are of the view that actuary's multiplier cannot be adopted. It would also be unjust to ignore the fact that if the award is based on the total contribution for the entire period up to the year when the deceased would have attained 70 years of age, the dependants would be able to obtain as monthly return by way of interest on the amount a sum much more than the estimated monthly dependency and, at the same time, would be left at the end of the period the entire amount in a lump sum. It is appropriate to notice that inflation has steeply pushed up interest rates also.

14. We notice that in *Him Devi v. Bhaba Kanti Das* 1977 ACJ 293 (Assam), a Full Bench of this court deducted 20 per cent on account of uncertainties of life and further 10 per cent on account of lump sum payment. The above decision is followed in *Drupad Kumar Barua v. Assam State Road Transport Corporation*

1990 ACJ 46 (Gauhati).

15. We will now consider the facts of the case bearing in mind what we have indicated above. At the time of the accident deceased was a contractor running a country liquor shop. In the claim petition it was mentioned that his monthly income was Rs. 750/-. However, at the stage of evidence his mother, examined as PW 4, deposed that the income was Rs. 1,500/- per month and the deceased was paying income tax. Exh. 2 was relied on to show that he was assessed to tax. At the relevant time the exemption limit for income tax was Rs. 8,000/- per year. It was not explained why Rs. 1,500/- per month was not mentioned in the claim petition. The Tribunal did not accept the evidence of PW 4. Income at the relevant time could be surely taken to be Rs. 750/- per month. It is evident that the deceased was a small-time contractor. There is nothing in the evidence to show that there was prospect of substantial increase in his income.

16. According to the Tribunal, the deceased would have been contributing Rs. 500/- per month towards the family. The family consisted of his mother and wife besides himself. In other words, the Tribunal divided the income among the three members of the family. This is not the correct way of assessing contribution. The deceased, who was running a country liquor shop, would have other expenses besides the expenses of his food at his house. The contribution fixed appears to be excessive based on his then income. We have already indicated that there is nothing to suggest that there was prospect of substantial increase in his income in future.

17. There is no evidence about the age of his mother. Learned counsel for the appellants stated that at the time of the accident she was aged 42 years. There is no evidence about her state of health. The deceased was married about 15 days prior to the accident. The possibility of the widow remarrying is a relevant factor to be taken into consideration. The Tribunal failed to determine the multiplier, but fixed a global amount of Rs. 80,000/-. It is not always safe to fix a global amount as compensation. If the sum of Rs. 80,000/- is deposited in a nationalised bank, the claimants would get interest of Rs. 800/- per month, which is nearly double the amount which they would have been receiving as contribution.

18. Having regard to all the aforesaid circumstances and the fact that no compensation has been awarded for loss of consortium and also keeping the effect of inflation and the possibility of remarriage in view, it will be reasonable to fix the contribution at Rs. 5,000/- per year and multiplier of 15. In other words, Rs. 75,000 would be just compensation. The Tribunal awarded a sum of Rs. 80,000/- but no appeal has been filed against the award by respondents herein. Under these circumstances, we find no ground to enhance the compensation awarded by the Tribunal.

19. The Tribunal did not award any interest from the date of application onwards, but directed interest to be paid at the rate of 15 per cent if the amount awarded

is not paid within three months from the date of the award. Such a procedure is normally followed when the parties settle the compensation amount without an enquiry. But in a contested case there is no reason to deprive the claimants of interest on the amount awarded from the date of the application having regard to the effect of inflation on the value of money. It is just and proper to award interest at the rate of 12 per cent per annum on the amount awarded from the date of application till payment.

20. In the result, we modify the award by directing that claimants will be entitled to interest at the rate of 12 per cent per annum on Rs. 80,000/- from the date of the application, namely, 31.3.1982, till payment. The award regarding compensation and costs shall stand.

21. The appeal is allowed to the above extent, but in the circumstances, we pass no order as to costs.