

(1990) 08 RAJ CK 0016
In the Rajasthan High Court
Case No : Special Appeal No. 19 of 1985

Rajasthan State Road Trans. Corpn.

APPELLANT

Vs

Pista Agrawal and Others

RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (1991) ACJ 890

Hon'ble Judges : S.C. Agrawal, C.J.; R.S. Kejriwal, J

Bench : Division Bench

Advocate : C.N. Sharma and M.K. Sharma, for the Appellant; G.K. Garg, for the Respondent

Judgement

K.C. Agrawal, C.J.—The accident giving rise to this appeal took place at about 9.30 p.m. on July 16, 1978 near Niro's Restaurant on Mirza Ismail Road, Jaipur in which Girraj Prasad Agrawal, husband of respondent No. 1 and father of respondent Nos. 2 to 4 died on account of rash and negligent driving of the driver of bus No. RRG 1957 belonging to the Rajasthan State Road Transport Corporation (hereinafter referred to as "the Corporation"). Respondent Nos. 5 and 6 are the father and mother of the deceased.

2. A joint application for compensation was made by the heirs and dependants of the deceased Girraj Prasad Agrawal claiming Rs. 13,29,800/- as compensation. The Motor Accidents Claims Tribunal, Jaipur granted an award for Rs. 2,75,000/-. Against the said award two appeals were filed, which were numbered as Civil Misc. Appeal. No. 203 of 1981 and Civil Misc. Appeal No. 177 of 1981. The former appeal was filed for setting aside the judgment of the Motor Accidents Claims Tribunal by the Corporation, whereas the second was filed by Pista Agrawal, the wife of the deceased and other dependants of Girraj Prasad Agrawal.

3. The Tribunal held that the accident occurred due to negligence of the driver of the bus belonging to the Corporation. It negated the plea of the Corporation of contributory negligence to save itself from the compensation. The Tribunal by

adopting a multiplier of 23 awarded compensation at Rs. 2,41,500/-.

4. By increasing the multiplier to the figure of 28, the learned single Judge raised compensation to Rs. 3,09,000/-. This figure includes Rs. 15,000/- by way of consortium. He allowed consortium of Rs. 5,000/- to the widow, Rs. 2,000/- to each of the children and Rs. 2,000/- each to father and the mother. He rejected the claim to further enhance compensation on the basis of mental shock, agony, physical suffering, loss of love and affection in view of the decision of the Rajasthan High Court in *M/s. Shyamsunder Vs. Narbada Bus Servicers Others*,

5. Against the judgment of the learned single Judge two appeals have been filed, as aforesaid.

6. The questions which require our consideration are:

(i) whether the learned single Judge committed an error in increasing the multiplier? and

(ii) whether the learned single Judge was wrong in not deducting 25 per cent out of the compensation found payable to the heirs of the deceased due to lump sum payment?

7. There are two methods of calculating compensation: one is known as the method of life span and the other is that of multiplier.

8. In *McGregor on Damages*, 14th Edn., para 1289, at page 877, this aspect has been succinctly dealt with under the sub-title "General Method of Assessment" thus:

The courts have evolved a particular method for assessing the value of the dependency, or the amount of pecuniary benefit that the dependant could reasonably expect to have received from the deceased in the future. This amount is calculated by taking the present annual figure of the dependency, whether stemming from money of goods provided or services rendered and multiplying it by a figure which, while based upon the number of years that the dependency might reasonably be expected to last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. This latter figure has long been called the multiplier; the former figure has now come to be referred to as the multiplicand. Further adjustments, however, may have to be made to multiplicand or multiplier on account of a variety of factors, viz., the probability of future increase or decrease in the annual dependency, the so-called contingencies of life and the incidence of inflation and taxation. Moreover, the value of the dependency can include not only that part of the deceased's earnings which he would have expended annually in maintaining his dependants but also that part of his earnings which he would have saved and which would have come to his dependants by inheritance on his death.

In paras 1306 and 1307 at pages 888 and 889, which occur under the sub-title "Calculation of the multiplier" the learned author has made the following

pertinent observations:

(ii) Discount for lump sum : The dependants' annual loss-the multiplicand-is not to be multiplied by the number of years during which they have been deprived of the deceased's support; this would clearly produce over-compensation as it would put the deceased's future contributions into the dependants' hands long before they would otherwise have received them and would enable them to enjoy the interest accruing in the intervening period. It is the present value of the future contributions that is to be awarded and while the surest way of ascertaining such present value is by resort to combined annuity and life expectation Tables which give the present value of an annuity for the life of persons of every age, the courts, as already indicated, are somewhat chary of using statistical data. However, although the courts prefer the more haphazard approach of making a somewhat arbitrary deduction in the multiplier to be applied to the figure of annual loss, they are still prepared to check their calculations against the available statistical data....

9. In Kemp & Kemp on Quantum of Damages in Personal Injury and Fatal Accident Claims, Vol. I, 4th Edn., the method usually adopted by the courts for assessing the damages to be awarded for the dependants' loss is discussed. The relevant para is as under:

The passage cited from Lord Wright's judgment continued as follows:

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 dependant and other like matters of speculation and doubt."

We have omitted this sentence from the present edition of the book for two reasons. First, a widow's remarriage and prospects of remarriage are no longer to be taken into account. Secondly, the modern practice is to take the various uncertain factors into account in fixing the appropriate multiplier.

10. At pages 231 to 234, the learned authors have discussed under the sub-heading "The Multiplier", the various factors which enter into account while selecting the appropriate multiplier. At pages 233 and 234, the following observations are found to have been made:

On the other hand, the court must take account of the uncertainties of life, particularly where the deceased was engaged in some especially hazardous employment.

The court will also make some discount on the ground that the dependants get a lump sum amount and will be able to enjoy the interest on it. But the rate of interest envisaged by the court should be "interest rates appropriate to times of stable currency such as 4 per cent to 5 per cent". Regard should also be had to the fact that the interest may be taxed; only the net rate after deduction of tax should be taken into account.

11. These passages indicate that the consideration that the dependants get a lump sum amount is a factor which affects the multiplier and must be taken into account while choosing the appropriate multiplier.

12. If the future increase in income had been allowed, then there could be some justification for some deduction out of the amount by way of lump sum payment of compensation to the dependants of the deceased. If the prospects of the deceased improving his earnings were also ignored, no deduction on account of lump sum has to be made, reason being that compensation is determined on the basis of the income at the time of accident.

13. In *Bhagwanti Devi and Others Vs. Ish Kumar and Others*, a learned single Judge of the Delhi High Court dealt with the question about deduction. He held:

... Such deduction; however, would not be justified on the facts of the present case for two reasons. In the first instance, the benefit of receiving lump sum payment is wholly illusory. The award was made on January 14, 1971 and the dependants have not as yet received a single penny out of the compensation awarded to them and the matter is at the first appellate stage. The litigation is likely to continue further and I would not be surprised if another few years would elapse before the dependants could receive the compensation to which they are entitled. Secondly, the runaway inflation and the consequent devaluation of the rupee has considerably reduced the quantum of compensation in its real worth and being so, it would be unreasonable in the present case to make any deduction on account of the prospect of getting the benefit in one lump sum. The view that I have taken of the matter finds support from *Prem Singh and Others Vs. Tika Ram and Others*, , *Narain Devi Vs. Dev Raj and Others*, , *Khidni and Others Vs. Dayal Singh and Others*, , *Himachal Government Transport, Simla and Another Vs. Joginder Singh and Another and Damyanti Devi and Others Vs. Sita Devi and Others*

14. The fact that on account of the inflation the value of money falls down was recognised by the Supreme Court in *Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others*, wherein their Lordships of the Supreme Court have held thus:

The delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes the sting out of the laws of compensation because an infant child who seeks compensation as a dependant of his deceased father has often to await the attainment of majority in order to see the colour of the money. Add to that the monstrous inflation and the consequent fall in the value of the rupee. Compensation demanded, say, ten years ago, is less than quarter of its value when it is received today.

15. Since the benefit of getting a lump sum is offset by the increase in prices and the progressive decrease in the value of the money no deduction for the lump sum payment is to be made.

16. In *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, the Supreme Court awarded compensation by multiplying the life expectancy without making any deduction.

17. From what we have said above, we find that if the proper multiplier is applied taking into account the uncertainties of life, lump sum payment etc., then, in our opinion, there is no scope for further deduction on the same account. Such a view has been taken by the Division Bench of Bombay High Court in *Maharashtra State Road Transport Corporation Vs. Babalal Daud Mulani and Others*, also.

18. In the instant case, the Tribunal had applied the multiplier of 23 for awarding compensation to the respondents. The multiplier has been raised to 28 by the learned single Judge by finding that the deceased was 32 years of age at the time of the accident and had left behind a young widow, three children and his aged parents. For the view that the deduction of 25 per cent on account of lump sum was uncalled for, the learned single Judge placed reliance on the following rulings:

- (1) *Bhagchand Panju Ram and Another Vs. Smt. Snehlata and Others*,
- (2) *Bhagwanti Devi and Others Vs. Ish Kumar and Others*,
- (3) *Municipal Corporation of Delhi and Others Vs. Shanti Devi Dutt and Another*,
- (4) *Delhi Transport Corporation and Anr Vs. Pushpa Chopra and Others*,
- (5) *Mohinder Kaur and Others Vs. Manphool Singh and Others*,
- (6) *Srisailam Devastanam Vs. Bhavani Pramamma and Others*,
- (7) *National Insurance Company Ltd. Vs. Pushpa Kunwar and Others*,
- (8) *Smt. Sudershan Puri and Others Vs. R.S.R.T.C. and Another*,
- (9) *Satya Wati Pathak Vs. Hari Ram and Others*,

19. We are not only of the view that the multiplier was correctly increased from 23 to 28 by the learned single Judge but also that he was justified in not making a deduction of 25 per cent on account of lump sum payment of compensation.

20. The learned single Judge thereafter allowed the claim of consortium to the wife, children and parents. He granted consortium of Rs. 5,000/- to the widow; Rs. 2,000/- to each of the children and Rs. 2,000/- each to the father and the mother. Thus, the amount under this head was Rs. 15,000/-.

21. The concept of consortium was related to the consorts, namely, the husband and the wife. It is to be noted that the word has a fixed meaning connoting only the husband and the wife and the companionship, fellowship or togetherness of the husband and the wife alone is indicative of "consortium". u/s 168 of the Motor Vehicles Act, 1988 (Section 110-B of the old Act), the court is required to award just compensation. The factor of loss of company of a near and dear one

in the family can be taken note of and a reasonable compensation can be awarded. Loss on account of love and affection cannot be objectively assessed as it can be done in the days (Sic. case) of loss of income. Precisely, for this purpose pecuniary loss suffered by parents, children and wife can be taken into consideration by determining the compensation awardable to them.

22. In the present case before us, the learned single Judge increased multiplier from 23 to 28 by finding that the compensation arrived at by the Tribunal at the rate of multiplier applied was much less than what should have been awarded to them. While doing this, the learned single Judge took care of all the pecuniary loss capable of calculation. The learned single Judge was, however, wrong in awarding consortium at the rate of Rs. 5,000/- to wife, Rs. 2,000/- to each of the children and Rs. 2,000/- to each of the parents. The addition of Rs. 15,000/- by the learned single Judge to compensation was not justified.

23. Respondent Nos. 1 to 6 have filed a cross-objection under Order 41, Rule 22 of the CPC read with Section 110-B of the Motor Vehicles Act against the decision of the learned single Judge claiming the same at Rs. 10,54,800/-. The respondents have claimed that the compensation awarded by the learned single Judge is liable to be further enhanced. According to the respondents, the learned single Judge should have used the multiplier as 43 and the amount of expectancy of benefit should have been taken into consideration at the rate of Rs. 1,170/- per month instead of Rs. 875/-. The ground given by the respondents is that the expectancy of the age of the deceased should have been decided on the basis of the ages of his parents for which evidence has been brought on record.

24. We have heard learned counsel for the respondents in the cross-objection and have not found any justification for raising the amount awarded by the learned single Judge. As stated earlier, u/s 110-B of the Motor Vehicles Act, the compensation to be awarded should be "just". While deciding the "just compensation" in a case, the Tribunal is required to bear in mind and apply the principles laid down by Indian and English decisions under the Fatal Accidents Act as far as they may be applicable and insofar as they may promote the interest of justice. The power given to the Tribunal is although wide but it is required to ascertain it by balancing on the one hand the loss to the claimant of future pecuniary benefits and on the other hand any pecuniary advantage.

25. The task of assessing compensation in accident action bristles with many difficulties. There is an element of guesswork also in the process. It is true that the word "just" has a very wide meaning but nonetheless courts cannot in a case causing loss to the dependants convert the calamity to turn into a windfall in ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, but only with reference to pecuniary loss.

26. In *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601, Lord

Wright observed "it is a hard matter of pound, shilling and pence". The mode of assessment of pecuniary loss suffered by the dependants is a baffling one. It is beset with certain difficulties and depends on many imponderables. It is to be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of the life of the deceased.

27. In *Franklin v. South East Railway Co.* (1858) 157 ER 448, Pollock, C.B. observed:

We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough.

28. In *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601, Lord Russell of Killowen stated the law thus:

The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Act is well settled, viz., that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those acts the balance of loss and gain to a dependant by the death must be ascertained.

29. The damages are to be based on the reasonable expectation of pecuniary benefit and it cannot be raised to any imaginary figure in the zeal of helping the members of the family of the deceased. The basis is not what has been called solatium, that is to say, damages given for injured feelings or on the grounds of sentiments, but damages based on compensation for a pecuniary loss.

30. In the instant case, we have seen above that the multiplier was raised by the learned single Judge from 23 to 28. The learned counsel for the appellant argued with emphasis that the raising of multiplier from 23 to 28 was uncalled for and it could not be 28. Determination of proper quantum of damages cannot be made with mathematical accuracy and as the learned single Judge has raised the multiplier to 28, for justifying ground, we find no averment in the cross-objection filed by the respondents. We find no substance in the argument advanced before us that the multiplier should have been 42. The same cannot be determined merely on the basis of the ages of the parents of the deceased Girraj Prasad Agrawal. There are many other imponderables which had to be considered and multiplier decided on that basis. In the cases cited on behalf of the respondents, multiplier was more than 28 but it depends on the facts and circumstances of each case and this controversy has to be decided by a Tribunal or court by considering the same. There can be no rigid or fixed method for applying the particular multiplier.

31. In *N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another*, the Hon'ble Supreme Court held that no compensation could be awarded for agony suffered by the dependants. What is compensated by way of compensation is the pecuniary loss suffered by the dependants on account of death, but, in the case of loss of happiness, loss of company, mental

pain, agony and grief the same cannot be ascertained. There is no yardstick by which the court can measure the amount to be awarded for pain and suffering. The damages which are to be awarded for a tort or those which, so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences with human suffering or personal deprivations. It is awarded to make good a financial loss. Although there is no fixed and unalterable standard of damages, the courts have been making the assessment which is appropriate to the facts of any particular case. For arriving at a just amount, there are certain factors to be taken into account. An award based on all relevant considerations has to be accepted by a court of appeal which can review the assessment of damages if the lower court has omitted some relevant considerations or admitted some irrelevant considerations or if the amount is so excessive or insufficient as to be plainly unreasonable.

32. In the instant case, the Tribunal awarded compensation which was insufficient bringing it to the level of unreasonableness. Consequently, the learned single Judge rightly set aside the same and enhanced it by applying the multiplier of 28. The multiplier of 23 was too low. There would be no justification for further increase of compensation.

33. For what we have said above, we allow the appeal of Rajasthan State Road Transport Corporation partly by reducing the compensation by Rs. 15,000/-. In other respects, the appeal of the Corporation fails and is dismissed. The cross-objection has also no substance and it is also dismissed but in the facts and circumstances of the present case, we direct the parties to bear their own costs in the appeal as well as in the cross-objection.