

(1986) 08 RAJ CK 0050
In the Rajasthan High Court
Case No : Special Appeal No. 20 of 1985

Roop Narain and Another

APPELLANT

Vs

Avtar Singh and Others

RESPONDENT

Date of Decision : 10-08-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110CC, 96(2)
Rajasthan High Court of Judicature Rules, 1952 — Rule 18

Citation : (1986) 08 RAJ CK 0050

Hon'ble Judges : N.M. Kasliwal, J; Inder Sen Israni, J

Bench : Division Bench

Advocate : G.C. Mathur, for the Appellant; S.C. Srivastava and H.M. Bhargava, for the Respondent

Final Decision : Allowed

Judgement

Inder Sen Israni, J.—This is a D.B. Special Appeal under Rule 18 of the Rajasthan High Court Ordinance against the judgment dated 24.9.1984 passed by the learned single Judge of this High Court in S.B. Civil Misc. Appeal No. 26 of 1982 which was filed against the award of Motor Accidents Claims Tribunal, Jaipur, dated 17.9.1981 in M.A.C. No. 149 of 1979.

2. It will not be necessary for the decision of this appeal to narrate all the facts of the accident, on account of which the claim petition arose. Suffice it to say, deceased Mahesh Chand aged 24 years lost his life on account of unfortunate accident, which occurred on 26.3.1979 due to negligence of Respondent No. 1, the driver of truck No. RSG 9737 A claim of Rs. 1,20,000/- was, therefore, filed by the Appellants. The Claims Tribunal framed first issue regarding rash and negligent driving and second and third issues regarding quantum of compensation to be awarded to the claimants. After trial of the case, the learned Tribunal held that the accident took place on account of negligent driving of Respondent No. 1 and passed an award on 17.9.1981 for a sum of Rs. 20,000/- with interest at the rate of 12 per cent per annum in case the amount is not paid

within a period of 3 months, i.e. up till 17.12.1981. The Appellants were dissatisfied with the findings on issue Nos. 2 and 3 regarding the quantum of compensation awarded to them. An appeal was therefore, filed against the award in this Court. This appeal was heard and decided by the single Bench of this Court on 24.9.1984. The appeal was partly accepted and award of Rs. 20,000/- was raised to Rs. 30,000/- by which multiplier of 12 years was raised to 20 years. An amount of Rs. 125/- was expected to have been spent by the deceased on looking after his parents the Appellants. An amount of Rs. 500/- was also awarded as costs. The findings of the Tribunal regarding interest were also confirmed. The Appellants dissatisfied with this judgment have preferred this special appeal.

3. Since the special appeal is within the narrow compass of further raising the compensation amount only, the lawyers of both the parties agreed that this special appeal may be decided after hearing full arguments at the stage of admission itself.

4. We have heard the rival contentions of learned Counsel for both the parties and also perused the record of the case.

5. Mr. G.C. Mathur, learned Counsel for the Appellants, at the very outset, stated that he only prays for raising of the amount from Rs. 30,000/- to Rs. 50,000/- only, so that the burden of payment of amount of award is restricted only to Respondent No. 3 the insurance company. He has stated that the deceased was a young and bright person of 24 years of age and was trained welder of I.T.I. and it has come in evidence on oath that he was called for interview in the service to a post which carried the salary in the grade of Rs. 650-1300 and that it has not been rebutted by the opposite parties. He has further contended that the learned single Judge should have revised the amount of Rs. 125/- to atleast Rs. 400/- as the possible support the deceased would have provided to his parents. He has also contended that the learned single Judge has further erred in confirming the findings regarding interest only from the date of award instead from the date of institution of claim petition.

6. Mr. H.M. Bhargava learned Counsel for Respondent No. 3 on the other hand has supported the judgment of learned single Judge of this Court and has contended that all aspects of the claim have been properly considered and there is no justification for interfering with the judgment under appeal. He has further stressed that the dependency contribution of Rs. 400/- will be on a much higher side and in any case it should not be more than Rs. 200/- p.m.

7. It is on record that Appellant No. 1 father of deceased, was 50 years old and Appellant No. 1, mother of the deceased was 45 years old at the time of accident. Mr. Roop Narain Appellant No. 1 in his statement before the Tribunal has stated that his son lived with him and he could have easily got service in the grade of Rs. 650-1300 since he was I.T.I., diploma holder in welding. He has also stated that Appellant No. 2, the mother of the deceased had to undergo mental

agony on account of death of their son. No evidence in rebuttal of the statement given by Appellant Roop Narain on oath has been given by either of the parties. It may also be pointed out that the insurance company cannot raise any objection regarding the quantum to be awarded to the claimants. The insurance company can raise only such defences, which are available to it as per the provisions of Section 96(2) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). I am fortified in my opinion by the decision in *British India Genl. Ins. Co. Ltd. v. Captain Itbar Singh* 1958 ACJ 1 (SC). In this case, it is evident that deceased was a qualified person and stood on threshold of his life when this unfortunate accident snatched him from the scene of his career. There can be no greater shock to the parents than the sudden death of a young and qualified son, who was living with them and was expected to look after them in their old age. It is also evident that minimum income of such a person cannot be taken to be less than Rs. 650/- even not caring to add allowances that the deceased might have received on joining any employment. The quantum should be fixed on the amount of earning after deducting expenses he might have spent on his own self. The rest is expected to have been spent on the support given to the parents or family members with whom the deceased was living. Even if the deceased had married after some time, it does not mean that the contribution made by him to the parents could have substantially reduced but with passage of time, was also expected to increase. We, therefore, feel that any substantial reduction from the amount expected to be available for assistance of the Appellants should not be reduced on account of any future contingency of marriage by the deceased. The courts should not be too pessimistic in awarding compensation in tragic cases like this, because the parents have, in any case, to live their life in spite of non-availability of best source to them at the old age. However, this does not mean that the compensation should come as a windfall to the claimants. The compensation awarded should, therefore, strike a balance between two extreme points.

8. The cost of life keeps on rising constantly and the old parents have to face the same all alone without any support, which was standing behind them and indicating their source of solace and comforts. The Act is a piece of welfare legislation to come to the rescue of family members of the deceased when the bread earner is lost in a cruel accident and the family should not be left unattended and uncared to face the life in adverse circumstances all alone.

9. Learned Counsel for the Appellant has drawn our attention to the case of *Mangaldas Mohanlal Patel and Another Vs. Union of India and Another*, This was a case of a young boy aged 13 years, who was studying in VIIth Standard and not earning. It was pointed out by the Gujarat High Court that in such matters positive approach and optimistic view of life should be adopted. In this case, the Tribunal awarded Rs. 21,000/-, which on appeal was raised to Rs. 54,000/- by applying 15 years" multiplier and assessing the dependency benefits of the parents at Rs. 300/- holding that he would have earned atleast Rs. 600/-p.m. However, the award was enhanced by Rs. 10,000/- because the appeal was

restricted only up to that amount. In the case of *Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi* 1983 ACJ 666 (Bombay), the deceased a boy of 16 years was student with convent and public school background, sports credits and passed I.C.S.C. examination. The claimant was his mother. The Tribunal assessed the probable income at Rs. 400/- p.m. and financial support to the claimant was assessed at Rs. 200/- p.m. and amount of Rs. 31,400/- including Rs. 5,000/- as loss to estate was awarded to the claimant. On appeal, the Bombay High Court assessed the financial support to the claimant at Rs. 300/- and enhanced the compensation to Rs. 50,000/-, which nearly comes to multiplier of 14 years. In the case of *K.L. Kasar v. Haribhau Savlaram Shejwal* 1985 ACJ 92 (Bombay), a boy studying in 10th class, had aptitude for photography and excelled in ancillary arts like printing, developing and enlarging and a good sportsman and swimmer lost his life in an accident. The claimants, parents, sister and brother who was physically crippled and mentally retarded were awarded Rs. 1,00,000/- by the Tribunal. On appeal, this award was upheld by the Bombay High Court. Rs. 1,000/- was assessed to be the expected income and it was observed that during first 7 years the deceased would have contributed 2/3rd of Rs. 1,000/- p.m. or Rs. 8,000/- per year, which comes to total of Rs. 56,000/-. During next 8 years, the boy would have married and raised a family and the allowances which his parents could be expected from him would be naturally dwindled to Rs. 500/- p.m. or Rs. 6,000/- per year, which comes to Rs. 48,000/- for this slab of 8 years. In the case of *Amini George v. Bhagat Singh* 1985 ACJ 533 (P and H), the deceased was a B.Sc. student aged 18 years. In the claim filed by the mother of deceased aged 45 years, the Tribunal awarded Rs. 11,000/- as compensation to her. In appeal, it was assessed that prospective future earnings of the deceased could be Rs. 1,000/- per month and dependency for the claimant was assessed at Rs. 3,000/- per annum. The multiplier of 16 years was applied and award was enhanced from Rs. 11,000/- to Rs. 50,000/-. She was further awarded interest at the rate of 12 per cent per annum from the date of application to the date of payment of the award. Rs. 300/- were awarded as fees of the counsel.

10. Mr. H.M. Bhargava appearing on behalf of Respondent No. 3 has drawn our attention to the case of *The Oriental Fire and General Insurance Co. Ltd. Vs. Juliana M. D'souza and Others*, in which the deceased was unmarried boy of 21 years. His mother aged 45 years filed a claim and the Tribunal calculated the dependency at Rs. 200/- per month and adopted multiplier of 40 years and awarded Rs. 70,000/- as claimed. In appeal, it was held that the allowance should have been made for uncertainty of life, lump sum payment and the fact that deceased would have married in near future curtailing the dependency. The amount was therefore.

reduced to Rs. 35,000/-. In this case, the court observed that since the mother-claimant was 45 years old, the lower court had obviously not taken her age into consideration while applying multiplier of 40 years. In the case of *Nav Bharat Builders v. Pyarabai* 1985 ACJ 79 (Bombay), the deceased was a IInd Year B.A. student, getting a scholarship of Rs. 1,200/- p.a. and also conducting coaching

classes. The claimant-mother aged 55 years filed a claim petition. The Tribunal assessed the dependency at Rs. 200/- p.m. and adopted 20 years' multiplier and awarded Rs. 40,500/- as compensation. In appeal, the award was reduced to Rs. 32,000/-. In this case the Tribunal held that the deceased at the time of his death was earning about Rs. 200/- per month and being a student he was handing over his income to his mother. So far as the future income of deceased is concerned, the Tribunal found that he would have normally earned Rs. 400-500 per month by serving in some Government Department or elsewhere and would have given at least Rs. 200/- per month to his mother. The Bombay High Court observed that looking to the age of the mother who was 55 years old and keeping in view the estimated increase in the average longevity of life, she would have received the amount for another 15 years only. It was also observed that after marriage the deceased could have contributed Rs. 150/- only towards family expenditure. Therefore, it was held that the amount could not exceed Rs. 32,000/-.

11. In the case of *Rajasthan State Road Transport Corporation v. Supyar Kanwar* 1986 ACJ 207 (Rajasthan), the deceased a taxi driver was of 31 years of age and was drawing Rs. 300/- per month. The Tribunal assessed the dependency of the claimants, widow and infant child at Rs. 125/- p.m. and adopted multiplier of 29 and dependency of child at Rs. 75/- and applied multiplier of 19. Thus the Tribunal awarded amount of Rs. 48,500/- to the widow including Rs. 5,000/- for loss of consortium. On appeal, this Court observed that there can be no hard and fast rule regarding applicability of multiplier and it will depend upon the facts and circumstances of each case. The award was upheld and the appeal was dismissed. As already stated above, the insurance company has no right to raise any objection regarding the quantum of compensation awarded to the claimants.

12. It is undisputed in the present appeal that the deceased would have earned at least Rs. 650/- p.m. as is established from unrebutted evidence given on behalf of the claimants. In all probability, the deceased would have contributed at least Rs. 300/- p.m. to his parents. If the multiplier of 15 is applied, the amount comes to Rs. 54,000/-. On the other hand, if the dependency amount of parents is considered to be Rs. 225/- p.m. keeping in view that after marriage the deceased would have contributed only Rs. 225/- p.m. In that case if the multiplier of 20 is applied, then also the amount comes to Rs. 54,000/-. The average age of expectancy in our country is now considered to be 70 years by various High Courts. Apart from this, if the deceased had married after few years, then his salary would also have increased by passage of time. So, on account of this, in our opinion the dependency amount of Rs. 300/- need not be reduced. We are, therefore, of the opinion that the amount of Rs. 50,000/- will meet the ends of justice in the present case.

13. Learned Counsel for the Appellant has also drawn our attention to the case of *Rajasthan State Road Transport Corporation Jaipur v. Kapoori Bai S.B.* Civil Misc. Appeal No. 144 of 1973; decided on July 31, 1984 (Rajasthan) in which it was

held that Section 110-CC provides for award of interest when any claim is allowed. The wordings of this section are that where any court or Claims Tribunal allows a claim for compensation made under this Chapter, such court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. It was further held that it is the duty of the court whether objection is taken or not to see that the award is made in accordance with the statutory provisions and the interest on compensation should be awarded from the date of making the claim as may be fixed by learned Tribunal.

14. In this case, the Tribunal had directed that if the amount of award is not paid within 3 months from the date of award the claimants shall also be entitled to receive interest at the rate of 12 per cent per annum. Keeping in view the provisions of Section 110-CC of the Act and the case of Supyar Kanwar 1986 ACJ 207 (Raj), we are of the opinion that the claimants are entitled to get interest at the rate of 9 per cent per annum from the date of filing of the claim petition till the realisation of the amount.

15. In the result, the appeal is allowed. The amount of compensation is raised to Rs. 50,000/- along with interest at the rate of 9 per cent per annum as mentioned above. The amount of award so far paid to the claimants by the Respondent No. 3 shall be adjusted from the amount of compensation awarded to the claimants by this Court.