

(1981) 09 GUJ CK 0012
In the Gujarat High Court
Case No : First Appeal No. 1341 of 1980

Rukshamaniben and Others	Vs	APPELLANT
Masaraji Amaraji Thakore and Others		RESPONDENT

Date of Decision : 04-09-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1982) ACJ 317 : AIR 1982 Guj 260 : (1982) GLH 193 : (1982) 1 GLR 525

Hon'ble Judges : V.V. Bedarkar, J;B.K. Mehta, J

Bench : Division Bench

Advocate : Akshay H. Mehta, for the Appellant; P.V. Nanavati, for the Respondent

Judgement

V.V. Bedarkar, J.—In this appeal question of some importance of computing the compensation in case of the death of an agriculturist-cum-social worker arises.

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2. The appellants who are the heirs of deceased Govindbhai, filed a claim petition, being Motor Accidents Claims Application No. 115 of 1978, before the learned Motor Accidents Claims Tribunal No. IV, Ahmedabad, claiming compensation of Rs. 50,000. The learned Tribunal, however, awarded only an amount of Rs. 8,600 and hence this appeal.

3. to 9. x x x x

10. This evidence shows that the deceased was an agriculturist as well as a social worker. After his death, though the agricultural lands have remained, the question of reduction in income due to the non-availability of supervising power of the deceased who was the owner, cannot be ignored. Recently we have decided one appeal, being First Appeal No. 1286 of 1980 in Dehiben v. Chitrabhai Onkarbhai Makwana on 31-8-1981: (reported in AIR 1982 Guj 1881. Therein, while relying on the previous two decisions of this Court, in Gujarat State Road Transport Corporation v. Malubai Menand (1980 21 GLR 400, and an unreported

decision in First Appeal No. 37 of 1972, decided on 3-2-1975, by the Division Bench, to which one of us (B. K. Mehta, J.) was a party, we have reiterated the enunciation made in those two decisions pertaining to the income from agriculture of a person who died in an accident, and whose personal supervision and experience would not be available after his death. We have considered that no different approach or yardstick is to be adopted for assessing the compensation in case of fatal accidents to agriculturists on the supposed ground that the agriculture estate remains intact and is inherited by the heirs of the deceased. We also observed that there is no justifying basis for this view because even in cases of victims under the Fatal Accidents Act who may be non-cultivators, there may be some properties in the nature of investments, savings, etc., which may come in the hands of the heirs and representatives of the deceased as a result of his death and which were also available in the lifetime of the victim. This would not, however, justify a Tribunal to take a different view in assessment of damages on the first head u/s. I-A of the Fatal Accidents Act merely because agricultural land holdings remain intact and are available to the dependents. In such cases, as observed by us in the aforesaid First Appeal No. 1286 of 1980: (reported in Dahiben Vs. Chitrabhai Chakabhai Makwana,), it will be necessary to evaluate as to what would be the additional liability of the dependents in procuring the equivalent services of that which were rendered by the deceased to find out how far the maintenance allowance is reduced and the extent to which the loss has ensued.

11. In the instant case, the deceased can well be said to be the owner manager of the holding the services of the owner-cum-manager cannot be put on the same par with that of an ordinary manager who has no stake in the property except to the extent of security of his services. The owner-manager is invariably interested not only in managing the property for the purposes of earning maximum income out of it, but is equally interested in managing it in a prudent and far-sighted manner as the owner so that the valuation of the property appreciates every year. We, therefore, observed in the aforesaid first appeal that the Tribunal has to bear in mind the twofold aspect, namely, (i) evaluation of the services of the victim as manager-owner and not as merely manager, and (ii) right of the victim as manager-owner to spend some amount out of his earning for his necessities and convenience in discharge of his duties. We, therefore, considered that the earnings of an agriculturist who died in an accident should be made on the basis of the income that would be available to the family by the toil of the deceased as owner-cum-manager of the agricultural lands. This aspect has to be applied to the facts of the present case.

12. It is true that out of 35 Bighas of land, major portion, i.e. 14 Bighas of land was with each of the appellants Nos. 2 and 3. But the income of the parcel of the land of 7 Bighas remaining with each was considered to be Rs. 5,000 a year. For earning this amount of Rs. 5,000, or to be precise, even the entire amount of Rs. 15,000 which was the net savings from the agricultural operations, the supervision, personal toil and experience of the deceased can never be

overlooked. If an amount of Rs. 5,000 is considered as the amount which was available to the deceased for himself and the two members of his family, i.e. his wife and sister, then it can be said that the monthly income available to the deceased was round about Rs. 450. It is, therefore, very clear that the learned Tribunal was not justified in considering the income of the deceased from agriculture at Rs. 100 only, and also Rs. 100 towards his unemployed capacity. We are conscious that the entire amount of Rs. 5,000 per year cannot be considered as the loss to the unit of the family which was dependent on the deceased, but some reasonable amount on rational basis requires to be calculated.

13. So, even if the amount of Rs. 400 is considered as the income from the agriculture, we would slash it down by 50 per cent to calculate the income that was derived from the personal supervision, experience and toil of the deceased so far as the unit of his family was concerned, and that would come to Rs. 200 Per month. From this amount also, we would slash down by 40 per cent toward the uncertainties about his earning capacity, especially in view of the fact that he was also dependent on the servants employed by him. So, the loss of Rs. 120 per month can be considered towards the agricultural income.

14. Then comes the important question about the unemployed capacity which can properly be termed as "Unused Earning Capacity". In the book "Damages for Personal Injuries and Death" by Munkman, 5th Edition, in Note 8 in Chap. 2, on page 86, under the caption "Unused Earning Capacity", the following statement is made:

"Many people, of course, have a reserve earning capacity - among High Court Judges have been e.g. a doctor, a pharmacist, a sea captain and a mathematician, Others work below their full capacity, because high taxation renders the extra Wear and tear distasteful. Others retire early (and there is the ordinary case of retirement for age). All such cases must be taken on the basis of the choice they have exercised,"

In this book, some familiar cases are considered. A member of a religious order, for example, takes a vow of Poverty and does his or her work for nothing (often highly skilled medical or scientific work), giving his salary (if any) to the order. At one time such a person may be working in a college or hospital and receiving a salary at another time he may be doing exactly the same work for nothing, in the order's own houses or on foreign missions. By the accident he is deprived of the power to continue his work and give it freely. There is no difference in principle between earning a salary and handing it over, and giving valuable work without payment. This was of course considered for personal injuries. But that can very well be applied in Fatal Accidents also where the dependents are deprived of the potential earning capacity of a person whose earning capacity was not used.

15. In *Keating v. Elvan Reinforced Concrete Co. Ltd.* (1967) 3 All ER 611, the case of an artist who spent his time on unremunerative but satisfying paintings

was considered. In that case an opinion was expressed that compensation should be assessed on the basis of what he could have earned with commercially saleable work. It was specifically observed :

"..... Where someone deliberately chose not to use his earning capacity but to spend his time on work which gave him pleasure and satisfaction, the appropriate measure for damages was to take roughly the earning capacity which he would have had."

In the instant case also, deceased Govindbhai was a social worker and he was doing the work for the society which gave him pleasure or rather satisfaction of doing something good for the society. By that he was utilizing his energy in social service which he could have otherwise utilised for any remunerative business which an ordinary person would do. So, merely because the deceased was doing which a work which was not apparently remunerative, it cannot be said as "without potential earning capacity and therefore nothing would be available to the heirs Of the deceased. Therefore, we have considered the income of the family was of Rupees 5,000/- a year, and we have considered the income from the agriculture to be only Rs. 200/-. The unused earning capacity can also be assessed at Rupees 200/- per month. There would not be any slashing down so far as this amount is concerned, because it is the amount which would have been available for the energy utilised by the deceased in the social work which he was doing himself alone for his own mental and personal satisfaction. So, this amount can certainly be calculated.

16. A Division Bench of this Court, consisting of S. B. Majmudar and S. L. Talati, JJ. in *Tribhovandas Kishibhai Patel v. Iven Danial Reubens*, First Appeal No. 707 of 1977, decided on 12/15-91980, had an occasion to calculate the damages as compensation for the injuries sustained by a socio-political worker who had laurels in political and social fields, especially in the field of Milk Dairies, and calculated the amount of compensation computing some figure towards "Unused Earning Capacity". We, therefore, calculate the amount towards this unused earning capacity at Rupees 200/- per month, and when that is done, then the total loss per month to the dependents of the deceased in the income would be Rs. 320/- per month, i.e. Rupees 3,840/- per year.

17. Then comes the question of multiple. As considered earlier, the learned Tribunal considered that the earning life on an average cannot be taken to be more than 65 years normally, and in abnormal cases it may run till seventy at the highest, and further considered that if the case of deceased Govindbhai is taken at the highest, then the compensation that could be awarded would be for something like 61 future years and considering actual working capacity the multiple of 3J was applied. It must not be overlooked that the multiple is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependents and so many other factors. So when a multiple is applied reducing the possible span of life of a Person, there should not be any further

deduction.

18. Mr. P. V. Nanavati, learned Advocate for respondents Nos. 1, 2 and 4, submitted that as the deceased was aged 60 years Or somewhat more than that, even if the multiple applied by the learned Tribunal is not considered to be proper, in the instant case at the most the multiple of 5 can be applied and not more. It is his submission that the deceased was comparatively very old and though we may consider some amount that may be available to the family of the deceased for his work and also some Potential amount of his earning capacity, the earning capacity of the deceased would not have been for more than 5 years looking to his old age. We are not impressed with this argument, because even at this age the deceased had the zeal and capacity to move with other political and social workers and to go up to Gandhinagar from his village in Thasra Taluka and return from Gandhinagar at night. This would show that he had sufficient Physical strength and mental power to go for social work and, therefore, his capacity for agricultural work also cannot be overlooked. Therefore, even at that age if the deceased was so agile and active, it can well be said that he may have survived for 10 to 11 years. But in order to put the multiple, we would say that if the multiple of 8 is Put, it would be proper, and if that is applied, the total amount of compensation that would be available to the family would come to Rs, 30,720/-.

19. Normally a notional figure of Rupees 5,000/- is awarded for the death Though we are not satisfied with this figure of Rs. 3,000/- awarded as notional figure by the Tribunal, as the claim in the appeal is restricted to Rs. 25,000/-, by adding Rs. 3,000/- the total compensation available to the family of the deceased would come to Rs. 33,720/-, and if the amount of Rs. 8,600/- already awarded is deducted, the amount to be awarded in this appeal would be more than Rs. 25,000/-.

20. In the result, the appeal is allowed fully, and the appellants are awarded an additional amount of Rs. 25,000/with interest at the rate of 6 percent. Per annum from the date of the application till payment and costs.

21. Appeal allowed.