
(1990) 09 DEL CK 0006
In the Delhi High Court
Case No : First Appeal No. 156 of 1975

Seetha Lakshmi Krishnan

APPELLANT

Vs

Gian Parkash etc.

RESPONDENT

Date of Decision : 18-09-1990

Acts Referred:

Citation : (1992) 2 ACC 145 : (1993) ACJ 206 : (1992) 47 DLT 70 : (1990) RLR 510

Hon'ble Judges : M.L. Verma, J

Bench : Single Bench

Advocate : O.P. Goyal and V.K. Makhija, for the Appellant;

Judgement

M.L. Varma, J.

(1) This is a regular First Appeal against the order dated 20.5.75 of the. Motor Accident Claims Tribunal, Delhi, (hereinafter referred to as the Tribunal) on an application u/s 110A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). This application had been made by the appellants herein claiming compensation of Rs.2,00,000.00in all on account of the death of one Shri S. Krishnan. It was registered as suit No. 234/70. The Tribunal awarded a sum of Rs. 37,950.00only as compensation. The Tribunal also ordered payment of interest at the rate of 6% perineum from the date of the award till the date of realisation.

(2) In this appeal filed on 18.10.75 the award has been challenged on various grounds by the appellants. It is worth-noting that in ground No. 5 of the Grounds of Appeal the appellants took the stand that the compensation payable to them comes to more than Rs. 2,50,000.00 and have claimed that Therefore the Tribunal ought to have awarded the sum of Rs. 2,00,000.00 to them as compensation. The appellants Therefore restricted their claim for compensation in the appeal also to Rs. 2,00,000.00 in all. There is no cross appeal filed by respondent No. 2, Union of India.

(3) During the pendency of this appeal an application under Order 41 Rule 33 and Section 151 of the CPC was filed on 20.4.87 on behalf of the appellants. This application was registered as Cm 1374/87. The prayer in this application was that the increase in the pay and allowances of government servants may be taken note of while allowing the compensation since the deceased was also a government servant. It was contended in this application that the subsequent events such as the rise in salary and allowances due to their commendations of the various Pay Commissions should be taken into account while awarding the compensation. Notice of this application was issued to the respondents. Union of India, respondent No. 2, was served with the notice of the application. However, no counter affidavit reply to this application was filed on its behalf. On 17.8.87 it was ordered that this application be taken up for consideration along with the main appeal.

(4) A rather tall claim had been made in this application and the initial sum of Rs. 2,00,000.00 was sought to be raised to Rs. 5,00,000.00. According to the appellants this was on account of the normal increases which the deceased would have got as a result of the upward revision of pay-scales with effect from 1.1.7-3 and on various other dates as mentioned in the application. By a process of arithmetical calculations a figure of Rs. 5,00,000.00 was arrived at.

(5) This appeal was earlier disposed of by an oral judgment dated 10.1.89 passed by S.B.Wad, J. On that date no one had appeared for the respondents. The amount of compensation was enhanced and restricted to Rs. 2,00,000, by Wad, J. This was because the initial claim made by the claimants was only Rs. 2,00,000.00. The enhancement was made on the basis of certain figures mentioned in the Cm 1374/87. On that basis Wad, J. had held that the compensation would work out to Rs. 2,59,200.00 but finally ordered the enhancement of compensation to Rs. 2,00,000.00 in all. The claim of the appellants herein made in that application for enhancing the compensation to Rs. 5,00,000.00 was not accepted. It may be noticed that the appellants herein had not appealed against the said judgment and order of Wad, J.

(6) Since the aforesaid judgment of Wad, J. was delivered when none had appeared on behalf of respondent No. 2; an application was moved on behalf of the said respondent u/s 151 CPC read with Order 9 Rule 13 praying for "setting aside the order dated 10.1.89" and for re-hearing the matter "on merits". This application was allowed after notice to the no applicants/appellants herein. Consequently the appeal was re-heard by "me."

(7) In the appeal the questions "which survive for consideration are the questions regarding the adequacy of the amount of compensation to be paid to the appellants/claimants; the rate of interest payable on the compensation amount as well as the date" from which such interest should be paid.

(8) The facts of the case are simple. Most of the relevant facts are not in dispute. The husband of appellant No. 1, namely, the said Shri S.Krishnan was working

as an Investigator in the office of the Chief Controller of Imports and Exports, Ministry of Foreign Trade, Government of India, "New Delhi. On 1.4.70, while he was driving a scooter No. Dlj 6474, he met with an accident which proved fatal. The deceased was born on 22.3.39 and was just over 34 years old on the fateful day When he died as a result of the fatal injuries suffered by him because of the accident. He left behind his widow .appellant No. 1, a minor son viz. appellant No. 2. two minor daughters .appellants 3 and 4 and a widowed and dependent mother viz. appellant No .5.

(9) Unfortunately the mother died during the pendency of this appeal. However ,her death is of no Consequence as the claim and the appeal are by the L. Rs. of the deceased and the appeal does not abate. The claim made under the Motor Vehicles Act is in a representative capacity and the other L.Rs. are there to pursue the claim. It has been held that Order 22 CPC and the provisions regarding abatement are not applicable to the proceedings for compensation for fatal accidents. Reference may be made in this regard to the judgment of this Court in the case of Ram Sahai and Another Vs. Rabia Begum and Others, .

(10) As noticed above an application was filed by the aforesaid persons u/s 110A of the Act in their capacity as the legal representatives of the deceased S. Krishnan. As also noticed, Rs. 2,00,000.00 were claimed as compensation on account of the death of S. Krishnan as a result of the fatal accident .The fact of accident and the liability of the offending vehicle is not in dispute. The Tribunal found that the deceased was not at fault and that the offending vehicle involved in the .accident causing the death of S. Krishnan was Jeep No. Dle 4174 belonging to respondent No. 2. The Tribunal has also held that the claimants/ appellants herein are the legal representatives of the deceased his monthly salary was Rs. 583.25 p. On this, the Tribunal worked out a sum Of Rs. 300.00 only per month as the "dependency" of the family. This is almost half of the salary. The Tribunal took 24 as the multiplier factor on the basis that the deceased, being 34 years old, would have retired at the age of 58 years on 22.3.1994. On the basis of the dependency and the multiplier factor the Tribunal worked out a figure of Rs. 86,400.00.

(11) The sum of Rs. 86,400.00 was reduced to Rs. 37,950.00 by making various deductions totalling Rs. 48,450.00. A sum of Rs. 24,924.00 was deducted on account of the pension that the petitioners would get during the course of 24 years from 2.4.70. Rs. 11,000.00 was deducted on account of this amount having been received on the insurance policy of the deceased. Further sums of Rs.560.00 and Rs. 230.00 which had been received by the appellants herein as gratuity and bank balance of the deceased were also deducted. The aforesaid amounts worked out to Rs. 41,754.00 and after deducting this sum from Rs.86,400.00 a figure of Rs. 44,646.00 was arrived at. From the figure of Rs. 44,646.00 a further sum at the rate of 15% was deducted for lump sum payment and uncertainties of life. By this process the Tribunal came to the figure of Rs.37,950.00 and awarded this amount as compensation.

(12) Mr. Goyal learned Counsel for the appellants rightly made a grievance of the facts that the Tribunal has neither awarded nor even considered the earnings that the deceased may have made on account of the increase in his salary in his scale of pay which he would have got in the normal course. The Tribunal has also not considered the earning capacity of the deceased after his retirement keeping in mind the life expectancy. The economic value of the deprivation of the husband, father and son respectively of the claimants, the loss of affection, the shock, pain and suffering because of the death of the only male member in the family has not been taken into account by the Tribunal. Mr. Goyal rightly contended that the deduction made by the Tribunal on account of pension that would be received by the appellants herein over the period of 24 years is unwarranted particularly when the Tribunal has ignored that after retirement the deceased would have been entitled to much more pension if he had been alive. Similarly, no deduction should have been made for lump sum payment or for gratuity or for insurance, as has been held by Sultan Singh.J. in the case of Delhi Transport Corporation Vs. Harbans Kaur and Others, . In this judgment the learned Judge has noticed various judgments of this Court (most of them being of Division Bench's) wherein it has consistently been held that no amount should be deducted from the quantum of compensation on account of any of the aforesaid items or under any of the aforesaid heads.

(13) The Tribunal overlooked the fact that insurance was paid because of the provision already made by the deceased for his family. This could not have been deducted from the pecuniary loss of the appellants on account of the untimely and unnatural death of the deceased. The deduction on account of the gratuity is even more unintelligible since the deceased would have got a much higher amount as gratuity if he had been alive and continued to be inservice and had retired in the normal course. There is much less justification for deducting Rs. 230.00 as bank balance of the deceased. In a recent judgment of this Court delivered by S.B. Wad, J., in the case of Delhi Transport Corporation and Others vs. Kamlesh Arora and Others reported in 1989 (2) ACJ 1034 it has again been laid down that no deduction should be made for uncertainties or lump sum payments.

(14) Learned Counsel for the appellants urged that the whole approach of the Tribunal was wrong. He contended that whereas it has been held by the Supreme Court in the case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, that in motor accident cases determination of compensation must be liberal and not niggard; the Tribunal has adopted the converse and narrow minded approach in fixing the quantum of compensation. Apart from the deductions which had wrongly been made by the Tribunal, Mr. Goyal pointed out that the amount of dependency worked out by the Tribunal at a sum of Rs. 300.00 per month is not a fair estimate since the deceased had five dependants viz. the claimants, and Therefore, Mr. Goyal pointed out that it was not possible that the deceased would have spent nearly one-half the amount of his salary on himself or otherwise than on his dear and near ones being his five dependants.

Mr. Goyal contended that the Tribunal should have awarded Rs. 2,00,000.00 claimed as compensation being a fair estimate of the pecuniary loss. He further contended that in view of C.M. 1374/87 the compensation to be awarded to the appellants should be increased to Rs. 5,00,000.00.

(15) The learned Counsel for the appellants submitted that the appellants were entitled to the benefit of the increased pay and allowances which the deceased would have got in the normal course. According to Shri Goyal the future probable pecuniary loss suffered by the family had to be arrived at for computing and awarding the compensation. He submitted that subsequent events should be taken into account for calculating the quantum of compensation. In support of this contention Shri Goyal relied upon the judgment of Sutan Singh, J. of this Court in the case of Satya Wati Pathak Vs. Hari Ram and Others, as well as the judgment of the Supreme Court in the case of Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, .

(16) Shri V.K. Makhija learned Counsel for respondent No. 2 contended that the amount of compensation could not and should be calculated on the basis of higher salary which the deceased may have got on promotions if he had been alive. This, according to him, would be speculative. Since it could not be said whether the deceased would have got promotions if he had been alive. Besides, according to him, there was no such claim made in the original application nor is there any evidence on record on this point, in support of his contention Shri Makhija relied upon the decision of this Court in the case of Kamlesh Arora & Ors. (supra) where it was held that the question of additional payments for allowances and increase in salary in future would be the correct position as regards dependency of the family. In that case the contention on behalf of the claimants was that the deceased would have risen to the position of Manager in the company earning a salary of Rs.3,000.00 per month. This contention was supported by a letter written by the employer company in which the deceased was working which was produced in the Tribunal.

(17) The upward revision of pay-scale pursuant to the recommendation of the Third Pay Commission was made effective from 1.1.1973 as stated in C.M. 1374/87. The appeal was filed on 18.10.1975. In this appeal also the grievance was that the compensation of Rs. 2,00,000.00 as claimed should have been awarded by the Tribunal. No reason has been given why the claim for higher or larger amount of compensation was not made at the time of filing of the appeal. No reason has been given why an application seeking to increase the original claim was not made soon after 1.5.1982 on which date, as per C.M.1374/87 an award is supposed to have been given by some Board of Arbitration. It is now well settled that in motor accident claim cases claimants should not try to make a fortune out of misfortune.

(18) Reliance placed by Shri Goyal on the judgments in the cases of Satyawati Pathak (supra) and Manjushri Raha (supra) are not very helpful to the appellants. In Satyawati Pathak's case although subsequent events for

determination of emoluments were taken into account the amount of compensation awarded was limited to the claim originally made. In that case also it appears that a higher claim had been made on the basis of the increase in the scales of pay by making an application for taking into consideration the revised pay-scales as recommended by the Third Pay Commission. It was, however, held in that case that if alive the deceased would have opted to draw the emoluments under the revised pay-scales instead of the old pay-scales. In the case of Manjushri Raha also it has been observed in paragraph 7 of the judgment that the Courts below had not taken into account the salary which the deceased would have earned while reaching the maximum of his grade. In the application being C.M.I 374/87 it is not stated as to what the deceased would have earned as his pay and allowance if he had reached the top of his grade and as to when he would have reached the top of his grade.

(19) It may be noticed here that no authority was cited before me on behalf of the appellants for awarding a higher amount than originally claimed. As observed above in this very case Wad, J. had restricted the amount of compensation to Rs. 2,00,000.00 which was the claim originally made. The appellants herein had not filed any appeal against this. In Satyawati Pathak's case also the amount of compensation ultimately awarded was limited to the claim originally made. In Manjushri Raha's case the amount awarded by the Tribunal was increased but was much below the original claim made in that case.

(20) Compensation to be awarded must be just and fair to all. It is arrived at on the basis of data which cannot be ascertained accurately and must necessarily be an estimate or even partly a conjecture. Arithmetical process may not always result in arriving at the amount of fair compensation and it may actually lead to injustice sometimes. The measure of fair compensation is a matter of fair estimate on generalisation. The fact that the original claim was for Rs. 2,00,000.00 that in this appeal again this claim was reiterated, that when Wad, J., enhanced the compensation awarded by the Tribunal but restricted it to the original claim of Rs. 2,00,000.00 no appeal was filed; would lend credence to the fact that the appellants themselves considered and regarded the sum of Rs. 2,00,000.00 as fair and just-compensation to them for the future pecuniary loss suffered by them on account of untimely death of S. Krishnan. Neither Counsel was able to show why the amount of compensation should either be less than or more than Rs. 2,00,000.00.

(21) MR.MAKHIJA, learned Counsel for respondent No.2, could not convince me as to why the compensation to be awarded should be less than Rs. 2,00,000.00. In fairness, it may be noticed that he did not seriously challenge the contention of Mr. Goyal on behalf of the appellants that the Tribunal should have awarded Rs. 2,00,000.00 which was originally claimed as compensation. Mr. Makhija very vehemently submitted that the compensation amount should be restricted to the claim originally made. Since no reply or counter affidavit had been filed to C.M. 1374/87, Mr. Makhija could not traverse the figures mentioned in this application.

He did not seriously dispute that the petitioner would have earned an average of about Rs. 200.00 p.m. and in that event the dependency of about Rs. 800.00 p.m. would be a reasonable estimate. On this basis the amount of compensation would work out to over Rs. 2,30,000.00 with 24 being the multiplier factor. While disposing of this matter earlier also Wad, J., had taken 24 as the multiplier factor and the average salary of the deceased at Rs. 1,280.00 p.m. on the basis of the figures given in C.M. 1374/87. On that basis the compensation worked out to Rs. 2,59,200.00 but it was restricted to Rs. 2,00,000.00 as originally claimed.

(22) In my view also the appellants should get Rs. 2,00,000.00 as compensation. To my mind, this would be a fair and just amount of compensation. I would also take 24 as the multiplier factor. Taking that multiplier the dependency would work out to approximately Rs. 680.00 p.m. on Rs. 2,00,000.00. As noticed above, S.B. Wad, J. had also taken 24 as the multiplier factor which is what the Tribunal "had also done. This multiplier factor was arrived at in view of the age of the deceased at the time of his death and the age of retirement of Government servant being 58 years in normal circumstances. the dependency worked out by the Tribunal was too low. As already held above, the deductions made by the Tribunal are not Justified in law. I am of the opinion that since the earning capacity of the deceased after retirement, keeping in view the life expectancy, was not taken into consideration, no deduction should be made from the amount of compensation. Besides, deduction is also not warranted for the reason that no monetary value for the deprivation of the husband, father and son respectively of the claimants is being worked out while awarding compensation nor has anything been awarded for the loss of affection, shock and pain suffered at the death of the only male member in the family.

(23) Coming now to the question of the awarding of interest, it may be noticed that the claimants had claimed 9% (nine per cent) p.a. in the original claim as also in this appeal. u/s 110C interest is to be awarded from the date of application making the claim. In some of the cases interest has been awarded from the date of death i.e. even prior to the date of the claim application. In my view, the claimants are entitled to 9% (nine per cent) p.a. as interest on the amount of compensation from the date of claim application till the date of payment. Mr. Goyal cited various authorities, some of which were of the Supreme Court where interest of 12% p.a. had been awarded. However, since in the original claim only 9% p.a. had been claimed as interest, therefore, I am awarding the same. The claimants/appellants herein should get 9% (nine per cent) p.a. as interest on the compensation from the date of the claim application. However, since Rs. 27,950.00 as awarded by the Tribunal had been paid to the appellants, interest of 9% would be paid on Rs. 2,00,000.00 from the date of claim application till the date of payment of Rs. 37,950.00 and thereafter on the balance of the amount viz. Rs. 1,62,050.00.

(24) Mr. Makhija pointed out that a sum of Rs. 62,050.00 had been deposited in Court pursuant to an order dated 21.5.1990, Therefore, the respondent No. 2

should not be burdened with interest on this. amount after the date of deposit in this Court. I am unable to agree with this contention for the reason that the appellants herein could not withdraw this amount nor have use of the same. Under similar circumstances this Court had awarded interest on such a deposited amount also in the case of Satyawati Pathak (supra) wherein Sultan Singh, J., relied upon a judgment of the Supreme Court reported in P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar, for awarding interest on the deposited amount also since the claimants had not been able to withdraw the same.

(25) In conclusion I hold that the appellants are entitled to compensation of Rs. 2,00,000.00. They are also entitled to interest at the rate of 9% (nine percent) p.a. from the date of application till the date of payment. This 9% is to be paid on Rs. 2,00,000.00 from the date of application till the payment of Rs.37,.950.00 and thereafter on the sum of Rs. 1,62,050.00 till the date of payment of this amount along with full interest. The amount of Rs. 62,.050.00 deposited in this Court can be withdrawn by the appellants herein immediately. I further direct that the full amount payable to the appellants by respondent No. 2 viz. the compensation and the interest thereon should be paid to the appellants within one month from today. If there is any further delay in making the payments as directed herein then the appellants would be entitled to 12% p.a. as interest on the balance of the amount due to the appellants, that is to say; the appellants would then be entitled to an interest of 12% p.a. on the balance amount of compensation till the date they are paid their full dues by respondent No. 2, if full payment is not made to the appellants within one month from the date of this judgment. This direction is being issued for the reason that the claimants have been deprived of this amount for nearly 15 (fifteen) years during which period they must have had very hard times. Therefore, there should be no delay in payments being made to them now.

(26) The appeal is allowed and disposed of accordingly. There will be no order as to costs.