

(1989) 08 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No. 33 of 1982 with Cross-objection No. 51 of 1982

S.K. Bhatia and Another

APPELLANT

Vs

Jaspal Singh Mann and Another

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (1990) 1 ACC 34 : (1990) ACJ 13 : (1989) 2 ShimLC 292

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Kedar Ishwar, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—The claimants are the father and mother of Rakesh Bhatia who died on account of an accident that took place on 30.1.1972 two kilometers from Kandaghat on Kalka-Shimla road. They feel aggrieved by the award of the Motor Accidents Claims Tribunal dated 15.1.1982 which allowed an amount of Rs. 5,000/- as compensation against their claim for Rs. 2,00,000/-.

2. The allegation is that the deceased was a pillion rider with respondent No. 1 on motor cycle UPM 7737. It was owned by respondent No. 2 and was being driven by respondent No. 1 who was going from Shimla to Karnal. The accident, it is alleged, took place due to the negligence of respondent No. 1 which fact is contested. It is asserted that respondent No. 1 took the motor cycle unauthorisedly and without the permission and knowledge of respondent No. 2 who is the father of respondent No. 1. On driving and speed, it is alleged that the same was normal and cautious. As to the injury, it is alleged that while respondent No. 1 was negotiating the curve the deceased may have lost balance and fallen down and this fact was noticed when the vehicle was found light while driving.

3. The Tribunal framed the following issues:

(1) Whether the accident took place on account of rash and negligent driving on the part of respondent No. 1?

(2) If issue No. 1 is proved whether the petitioners are entitled to any compensation and if so to what amount?

(3) Relief.

4. On the issue of negligence, the Tribunal concluded that the accident took place due to the negligent driving of respondent No. 1 and the deceased died as a result of the same. On the question of compensation, the Tribunal assessed the same at Rs. 5,000/-.

5. Mr. Kedar Ishwar, who appears for the respondents, has assailed the conclusions of the Tribunal on all the issues and it is urged that in view of the evidence on record, the responsibility of respondent No. 1 for the accident has not been proved. Therefore, the award of the Tribunal deserves to be set aside.

6. Atma Ram Thakur, PW2, Commandant Battalion (H.P. Armed Police) states that on January 30, 1972, he was going to Chamba from Shimla with RD. Joshi, Personal Assistant to the then Chief Minister. This motor cycle, with two persons sitting thereon, driven in fast speed crossed them. Thereafter they saw this motor cycle lying on the road. The man who was driving was trying to lift the motor cycle and the other man groaning with injuries, was lying on the road. The injured was bleeding from his nose and ears. There was lot of blood on the road as well. He further states that he could not say about the cause of accident but they took the injured to Kandaghat Civil Hospital and he was admitted there. When cross-examined he states that his jeep was being driven at a speed of 40-45 kmph and the speed of the motor cycle that had overtaken them was more than 50 kmph. To his memory, the motor cycle was slightly damaged. He did not notice any skid marks on the road. He made inquiry from the driver of the motor cycle as to the cause of the accident but no reply was given and the driver kept quiet.

7. R.D. Joshi, PW 3, Personal Assistant to the Chief Minister, also states that he was accompanying Atma Ram Thakur, PW 2, on that day in the jeep. He states that two persons were sitting on a motor cycle. They overtook them at Tara Devi and thereafter at Shogi and the speed of the motor cycle, when it overtook them, was pretty fast. When they reached the place of accident, they found that the motor cycle was lying on the road and the man on the back seat of the motor cycle was also lying on the road while the motor cycle driver was setting the motor cycle right. The man lying on the road was picked up by them in the jeep and admitted in Civil Hospital, Kandaghat. Regarding speed, he states that the speed of their jeep was about 25 kmph.

8. S.K. Bhatia, PW 4, is the father of the deceased. He states that the deceased was 16 years 3 months at the time of the accident. He was his only son. The deceased was very healthy and was studying in Higher Secondary1 Class in

Sanatan Dharam School and was very good in studies and sports. He further states that his parents are alive, father is about 90 years and mother 88 years old. He further states that he was entirely dependent upon the deceased for his old age. He intended to put the deceased in business. His wife was alive. He was Purchase Manager in Delhi Cloth Mill group. He denies the suggestion that the occurrence was not due to the rash and negligent act of respondent No. 1. Surjit Singh, PW 5, is a driver of an oil tanker. He states that on 30.1.1972 he was going from Kalka to Shimla. Before him was an army convoy and A.R. Thakur, PW 2, was even ahead of the convoy in a jeep. The motor cycle was carrying two young men ahead of the jeep and that the motor cycle skidded and hit against the hillside and both the driver and the man sitting on the pillion fell down. The driver and the motor cycle were in the middle of the road while the man on the pillion seat had fallen on the kutcha portion of the road towards the hillside. He could not give the exact speed of the motor cycle but the same was being driven fast. The man sitting on the pillion seat was unconscious and was bleeding from the mouth. He was taken to the hospital in the jeep. It was neither raining nor snowing. The road was dry and sky was full of sun. He denies the suggestion that it had rained prior to the occurrence on that day.

9. On the other hand, respondent No. 1, Jaspal Singh Mann, states that the motor cycle belonged to his father and he had not taken permission from his father for this Shimla trip. They started from Shimla at 9.00 a.m. The motor cycle was being driven at a slow speed and at the time of the accident, the speed was 20 kmph. They overtook one jeep which was going very slow, say about 15 to 20 kmph. The deceased was sitting behind him on the pillion of the motor cycle. There was rain a day earlier and when he was taking a turn, the motor cycle looked as if it was slipping and became light and when he saw behind, he found that the deceased had fallen down. He parked the motor cycle on the hillside and rushed to pick up the injured and while doing so, a jeep came from behind. It was stopped by him and A.R. Thakur, PW 2, sitting in the jeep was requested to carry the deceased to the hospital at Kandaghat. There was no rashness on his part in driving the motor cycle. The deceased was his good friend and used to come to his house many a time. He was a student of Class Tenth at the time of the accident. He was not a brilliant student. He had bad company and was not a promising student. The applicant is a Government servant and is handsomely paid and the deceased came from very good and well-to-do family.

10. AS. Mann, RW2, is the father of Jaspal Singh, RW 1. He states that he was away to Uttar Pradesh and had asked his wife not to allow respondent No. 1 to use his car or motor cycle. The same was taken away by respondent No. 1 without his authority and permission. Even the permission of his wife was not obtained. The claimant is residing in Lajpat Nagar, Delhi, and is a good officer in Municipal Corporation, Delhi.

11. There is no material evidence other than what has already been discussed above.

12. A perusal of the statements of the witnesses clearly demonstrates that the speed at which the motor cycle was being driven was high?say 45 to 50 kmph?as stated by Atma Ram Thakur, PW 2. This version has been supported by R.D. Joshi, PW 3, when he says that the speed was pretty fast. These witnesses are well placed persons and there is no reason why their version should not be believed on the speed aspect of the case. It is in evidence that the motor cycle was lying in the middle of the road where the accident had taken place. The road was not wet and it is difficult to believe the story set up by respondent No. 1 that the deceased might have lost balance and fallen down from the seat. It is not a case of collision between two vehicles and is a case where the maxim *res ipsa loquitur* is applicable and it can be said that in view of the evidence on record as to the fast speed of the vehicle and the nature of the road, the accident took place because of the negligent driving by respondent No. 1 and the deceased died as a result of the injuries sustained by him due to the accident.

13. Coming to the point of monetary compensation, it appears that the same has not been assessed by the Tribunal in accordance with the legal principles and that has, therefore, to be worked out afresh by this court.

14. As regards the mode of arriving at the quantum of compensation in such cases, the Supreme Court in *C.K. Subramonia Iyer v. T. Kunhi Kuttan* Near 1970 ACJ 110 has explained the dichotomy between Section 1-A and Section 2 of the Fatal Accidents Act. The apex court has laid down that there can be no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiary whichever is shorter will have to be taken into consideration but the calculation should not be speculative or fanciful though an element of conjecture cannot be ruled out. Before this decision, the Supreme Court had discussed such a situation in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* 1958 ACJ 179 and it was pointed out that:

Compulsory damages u/s 1A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the

deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority....

15. In *Mohd. Muzzafar v. Mohd. S. Sheikh* 1980 ACJ 516 Jammu & Kashmir High Court enhanced the compensation from Rs. 10,000/- to Rs. 25,000/- in a case where the deceased was a boy of 11 or 12 years of age and was studying in 5th Class with good academic reputation and the claimant, the father, was of 60 years of age.

16. In *G. Parvathi Ammal v. Pallavan Transport Corporation Ltd.* 1984 ACJ 342 (Madras), the compensation was enhanced from Rs. 17,900/- to Rs. 30,000/- where a boy of 18 years was studying in B.A

17. In *State of Punjab v. Ram Kumar* 1988 ACJ 564 this court did not disturb the award of Rs. 42,000/- in a case where the deceased was aged 18 years at the time of the accident. He had cleared the matriculation examination with 50 per cent marks in all subjects except Science. Although it was alleged that the deceased had engaged himself in the business of distribution of milk and newspaper while prosecuting studies thus earning Rs. 500/- to Rs. 600/- per month but that part of the evidence was not accepted by the Tribunal and this court observed that even if this evidence which had been rightly rejected by the Tribunal and not taken into account, still assuming that the deceased was not gainfully employed at the time of his death, the claim for compensation cannot be straightaway rejected. In such a case, the court observed, a reasonable guess estimate of the income which he would have earned in the course of time is required to be made for assessing the just compensation and that probable estimate will have to be made on the basis of factors like age, educational career and qualifications, the family background, the employment or career prospects and opportunities etc. The deceased had passed matriculation examination except in Science subjects in which he was placed in compartment with 50 per cent marks. His father was a halwai by profession and his brother was employed in Chandigarh. The family background and the academic record indicated that in the course of time, the deceased could have looked forward to making a career for himself and settle down in life on a reasonable scale and in the circumstances of the case, the court concluded, the deceased could have started earning minimum of Rs. 600/-per month, a wage which even a daily rated labourer earned those days. The deceased could, thus, be reasonably expected to have started earning an annual income of Rs. 7,200/-within a period of another five years and after settling down in life he would have married and raised a family in a period of another five to seven years and out of this amount he could divert at least 2/3rd towards maintaining himself and his family and the balance 1/3rd could have added to his estate or made available as dependency benefit to his parents, if needed. In this way, Rs. 2,400/- constituted the datum figure for assessing the compensation. The choice of multiplier in such a case could be 18 and by this way the just compensation could come to Rs. 43,200/- even if nothing more is added to the said compensation by way of conventional

compensation for the loss of expectation of life.

18. In *Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi* 1983 ACJ 666 the court enhanced compensation in case of death of a boy aged 16 years to Rs. 50,000/- although the Tribunal had allowed Rs. 31,400/-.

19. In my view, the views taken by the Bombay High Court and this court in cases cited above are the nearest to the point in issue in the present case and compensation can be assessed keeping in view the facts and circumstances of the case being discussed hereinafter.

20. Mr. Kedar Ishwar submits that no compensation is payable either for dependency or for loss to the estate as the deceased was a school boy and was not earning at that stage. I do not agree with these submissions. As held in *Hira Lal and Another Vs. State of Punjab*, the right to recover damages for having wrongfully caused death is wholly statutory as provided in Section 1A of the Fatal Accidents Act, 1855. The basic rule is that the designated beneficiaries are entitled to compensation for a pecuniary or a material loss, resultant from the death of a person, from whom there was a reasonable expectation of monetary benefit, assistance or support of which the claimant has been deprived by the death. It has to be a reasonable expectation, not a mere speculative possibility. Pecuniary loss is either an actual financial benefit of which the plaintiff had in effect been deprived or what may reasonably have been expected in future. Legal liability alone is not the yardstick for granting damages. The reasonable expectation in view of the relationship between the deceased and the survivors forms equally a good foundation for such a claim and if such expectations have been disappointed, the law will grant damages. The pecuniary advantage need not be in the form of cash or goods as service rendered by the deceased will be deemed of equal value.

21. In para 36, the court said:

The reasoning of the trial court for depriving the plaintiffs of their claim in suit, namely, that at the time of his death their son was not of any pecuniary advantage to his parents, and, that there were no reasonable expectations of any pecuniary advantage from the remaining alive of the son, is patently wrong and has not the support of law or logic.

22. The deceased was a student of 10th Class of Sanatan Dharam High School, Delhi. He was good in studies and sports. His father is well placed officer in the Delhi Cloth Mill group. Therefore, it is natural that the deceased would have got proper and complete education to enable him to seek a proper appointment and settle down in life. He was the only son of his parents. Therefore, it is obvious that the claimants were taking due care of him and paying attention for his welfare, he being the only ray of hope in their old age after retirement. The family has a history of longevity. The deceased could earn a minimum of Rs. 500/- per month and after some time he was expected to marry and have his own family. Out of this amount, he could be expected to spend Rs. 300/- on

himself and his family and the balance he could give to the claimants during this period and after the retirement of claimant No. 1 from service. Thus calculating, the annual figure comes to Rs. 2,400/- and multiplying the same by a suitable multiplier of 18, the compensation award-able comes to Rs. 43,200/- and after adding the conventional compensation of Rs. 3,000/- for loss of expectation of life, the total compensation payable comes to Rs. 46,200/-. The Tribunal has already awarded a sum of Rs. 5,000/- and in case the same has already been paid, the respondent will pay the remaining amount of Rs. 41,200/- to the claimants. The claimants are also entitled to interest at the rate of 8 per cent per annum from the date of the claim application till the date of payment of the compensation amount.

23. The appeal is accordingly allowed to the aforesaid extent.

24. In view of the discussion of the case and the conclusions arrived at as above, there is no force in any of the objections raised by the respondents in the cross-objections and the same are hereby dismissed with no order as to costs.