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**(1977) 10 OHC CK 0008**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 51 of 1976**

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| Smt. Archana Nayak and Another | Vs | APPELLANT  |
| State of Orissa and Others     |    | RESPONDENT |

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**Date of Decision :** 11-10-1977

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110B

**Citation :** AIR 1978 Ori 138 : (1978) 45 CLT 204

**Hon'ble Judges :** R.N. Misra, J

**Bench :** Single Bench

**Advocate :** S. Misra-1, for the Appellant; Standing Counsel and P. Roy, for the Respondent

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## Judgement

R.N. Misra, J.—This is an appeal by the claimants u/s 110-D of the Motor Vehicles Act against the award of compensation given by the 2nd Motor Accident Claims Tribunal asking for enhancement of the quantum of compensation,

2. The deceased Surendra Kumar Nayak was a Class-II Officer of the Orissa Administrative Service and was stationed at Bhubaneswar in 1969. In the afternoon of 12-6-1969, the deceased was returning from Cuttack to Bhubaneswar in a Station Wagon Bearing number O.R.C. 3442 belonging to the State of Orissa, Along with the deceased, one Sri J. B, Singh working then as Joint Director of Industries and certain other persons were travelling !n the Station Wagon, Near about the junction on the National Highway No. V with a road leading to New Capital area of Bhubaneswar in the close proximity of Vani Vihar, the Station Wagon met with a head-on collision with a truck bearing registration number O.R.U. 1053 coming from Khandagiri side on the National Highway. As a result of this collision, three persons met with their death--the deceased Surendra, the mother-in-law of Sri J. B. Singh as also the driver of the Station Wagon. Sri Singh received several injuries but survived. The widow of Sri Nayak and a minor daughter laid claim for compensation alleging that the drivers of both the vehicles were negligent and, therefore, the owners of both the

vehicles were jointly and severally liable to make good the amount of compensation.

3. The State of Orissa--owner of the Station Wagon--contended that the driver of the Station Wagon was neither rash nor negligent and the accident happened on account of rash and negligent driving of the truck. The owner of the truck as also its Insurer took the stand that the accident was due to the sole negligence and rashness of the driver of the Station Wagon and there was no negligence on the part of the truck driver. All the contestants maintained that the quantum of compensation claimed was imaginary and excessive.

4. By order dated 14-5-1971, the Claims Tribunal assessed compensation of Rs. 70,000/- apportioning the liability between the owners of the two vehicles. The State of Orissa carried an appeal to this Court being Miscellaneous Appeal No. 97 of 1971, There was a cross-appeal by the claimants. This Court allowed the appeal as also the cross-appeal and remitted the matter for a fresh disposal observing that the Tribunal should give opportunity to parties, especially the claimants, if they so desire, to prove the report of the Motor Vehicles Inspector and to examine him and to recall P. W, 4 for clarification of various aspects in regard to the spot-map (Ext. 10). It was also left open to the parties to examine other eye witnesses. After remand, the Motor Vehicles Inspector was not recalled for examination, P.W. 4 did not appear in spite of notice. Two persons said to be eye-witnesses to the occurrence were, however, examined on behalf of the claimants. Other parties did not choose to lead any further evidence.

On the evidence placed before the Tribunal, it came to hold that the claimants were entitled to compensation of Rs. 32,000/-, Rs. 22,000/- being compensation to the daughter and Rs. 10,000/-being compensation to the mother (widow of the deceased) in view of the fact that she had in the meantime been remarried. The liability was apportioned between the State of Orissa and the owner of the truck and the truck having been duly, insured, the Insurer -- the New India Assurance Company -- was directed to meet the demand of Rs. 16,000/- and the State of Orissa was called upon to deposit a sum of Rs, 16,000/- within three months in the State Bank of India on account of the minor claimant.

As already stated, the claimants alone have preferred the appeal and all others have accepted the award.

5. The main question for consideration in the appeal, therefore, is as to what should be the reasonable compensation. The Tribunal has found that Surendra died at the age of 35, He was a healthy man and would ordinarily have lived up to the age of sixty years. Being a Government servant, the Tribunal proceeded to hold that he would have superannuated at the age of 55 years. He would have obtained promotions during the further career of service and upon retirement would have been entitled to pension. On the basis of uncertainties of life, the Tribunal, however, reduced the period of service to twenty years. It found that Surendra was drawing a salary of Rs. 638/- at the time of death. It took into

account ten per cent of the salary towards his contribution to the provident fund, seven and half per cent towards rent of a Government building occupied by him and another two and half per cent towards Income Tax. Thus, the Tribunal scaled down the earning by twenty per cent and came to hold that the net income was Rs. 500/-. It calculated Surendra's expenses at Rs. 250/- on himself and the contribution to the family, therefore, was the balance Rs. 250/-. It apportioned the contribution by holding that the contribution for the benefits of wife and the minor daughter would be Rs. 200/- and Rs. 50/- respectively. It took note of the fact that the widow had remarried and, therefore, compensation for the mother and the child should be awarded separately. Remarriage came four years five months after the unfortunate accident, Accordingly the Tribunal found that compensation for this period at the rate of Rs. 200/- should work out to a net sum of Rs. 10,000/-. It proceeded to work out the compensation payable to the minor daughter by calculating at the rate of Rs. 50/- per month till the mother remarried and at the enhanced rate of Rs. 170/- for sixteen years whereafter according to the Tribunal, the daughter would have ceased to be a dependent and determined the same at Rs. 22,000/-. The method of assessment of compensation has been seriously disputed by appellants' counsel.

6. The Tribunal has proceeded, to determine compensation for the wife for a period of four years and five months on the basis that when she remarried, she was no more entitled to compensation because she ceased to be a dependant on the estate of the deceased. Counsel for the appellants relies on a very recent decision of the Supreme Court in the case of Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar AIR 1977 SC 1189, in support of his contention that this approach of the Tribunal is completely erroneous, In that case, the wife who was an earning member of the family died as a result of a motor accident and the husband remarried within eleven months of the death of the wife. Dealing with the matter of assessment of compensation, the Court held:-- (at p. 11191)

"A method of assessing damages, usually followed in England, as appears from Mallett v. Me Monagle (1970) AC 168 (supra) is to calculate the net pecuniary loss upon an annual basis and to arrive at the total award by multiplying the figure assessed as the amount of the annual "dependency" by a number of "years" purchase, (p. 178) that is, the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand. The husband may not be dependent on the wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar. (Underlining is mine) Here, the lady had 35 years of service before her when she died. We have found that the claimant's loss reasonably works out to Rs. 50/- a month i.e. Rs. 600/- a year. Keeping in mind all the relevant facts and contingencies and taking 20 as the suitable multiplier, the figure comes to Rs. 12,000/-....."

Learned Standing Counsel on the other hand contends relying on the principle

indicated in the case of *Nance v. British Columbia Electric Rly. Co. Ltd.* (1951) A.C. 601, where it was stated :

".....it is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was (let this be "x" years) and next what sums during these x years he would probably have applied to the support of his wife. In fixing x, regard must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident, In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available, though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted.....Supposing, by this method, an estimated annual sum of y is arrived at as the sum which would have been applied for the benefit of the plaintiff for x more years, the sum to be awarded is not simply multiplied by x, because that sum is a sum spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages. Then a deduction must further be made for the benefit accruing to the widow from the acceleration of her interest in his estate on his death intestate in 1949 (.....) and of her interest in sums payable on a policy of 1,000 on his life; and a further allowance must be made for a possibility which might have been realized if he had not been killed but had embarked on his allotted span of x years, namely, the possibility that the wife might have died before he did. And there is a further possibility to be allowed for--though in most cases it is incapable of evaluation--namely, the possibility that, in the events which have actually happened, the widow might remarry, in circumstances which would improve her financial position."

It is contended that the possibility of the widow of the deceased remarrying--and in this case actual remarriage four years and five months after--was a feature to be taken into account which the Tribunal had rightly considered. Learned Standing Counsel states that the guideline indicated in the English decision had been taken into account by a Division Bench of this Court in the case of *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, and on several occasions has been quoted with approval by the Supreme Court. See, *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, ; *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, ; and *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, . In the recent decision of the Supreme Court (*supra*) relied upon by the appellants' counsel, this aspect was not taken into account when compensation to the husband was granted notwithstanding the fact that after the death of the wife, the husband had remarried,

Appellants' counsel also relies upon the case of *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, , where it has been stated (at p. 1161):

".....It seems to us, however, that in making the calculation, the Claims Tribunal and the High Court overlooked two important and vital considerations. In the first

place, while the admitted position was that the deceased Satyendra Nath Raha was working in the grade of Rupees 590-30-830-35-900 and was getting a salary of Rs. 620/- p.m. at the time of his death, the Courts below have not taken into account the salary which he would have earned while reaching the maximum of his grade long before his retirement. It is admitted that the deceased Satyendra Nath Raha was 37 years of age at the time of the accident and at this rate he would have reached the maximum of the grade of Rs. 900/- at the age of 46 years i.e. full 9 years before his superannuation. The claimant has produced a certificate Ext, P-4 from the office of the Accountant General, Madhya Pradesh, Gwalior, which shows that from 11-4-1962 (i.e. the date next to the date of the death Satyendra Nath Raha) to October 15, 1980 which would be the last working day of the deceased Raha, the deceased Raha would have drawn Rs. 1,89,402/- including the increments earned and the maximum grade drawn. This figure may be rounded off to Rupees 1,88,000/-. Even if half of this be deducted as being rightly taken to have been spent by the deceased to cover day to day domestic expenses, payment of Income Tax and other charges, the actual income lost to the family including the value of the estate and the loss to the dependants would be Rs. 94,000/-. This will be a fair estimate which does not take into account the economic value of the deprivation to the wife of her husband's company forever and the shock felt by the children. It was suggested by the High Court that as the deceased Raha was not a permanent employee, the amount taken into account by the Compensation Tribunal was correct. This is however, not a consideration which could have weighed with the Claims Tribunal in making the assessment, because it was purely contingent. On the other hand with the rise in price index it could well have been expected that there would be several revisions in the grade by the time the deceased Raha had attained the age of superannuation, which, if taken into account, would further enhance the amount. In these circumstances, therefore, we think that the amount of Rupees 90,000/- would represent the correct compensation so far as the salary part of the deceased Raha is concerned."

The Supreme Court further took into account pension for ten years and death-cum-retirement gratuity payable to the deceased if he had retired after full term of the service.

It is conceded by learned Standing Counsel appearing for the State of Orissa that the Tribunal went wrong in calculating compensation on the basis of superannuation at the 55th year of age and he concedes that it would be worked out on the footing of retirement being due at the age of 58 years. It is also conceded by learned Standing Counsel, which in my view is fair, that the Tribunal failed to take into consideration that the deceased was in a pay scale where even without any promotion, he would have been drawing a salary of about a thousand rupees by the time of superannuation. That apart, there was certainly possibility of promotion and the deceased going into higher grades of pay. Thus, admittedly, if Surendra had not died as a result of the accident, he would have had a career of twenty three years of service. At the date of death his net income

was taken to be Rs. 500/-. Considering that by the time of superannuation, the salary even in the present scale of pay would have been about Rs. 1,000/-, I am prepared to adopt a flat rate of Rs. 750/- for the purpose of assessment of compensation. This does not take into consideration the possibility of higher salary in other grades, On the footing that Surendra's average income from salary would have been around Rs. 750/- net a month and accepting that Surendra would have required Rs. 250/- for his own expenses, the contribution to the family must be taken at Rs. 500/- per month, On that footing, during 23 years of service which he would have rendered, his contribution to the family would have worked out at Rs. 1,38,000/-. Admittedly, Surendra would have been entitled to pension and even accepting that he would have lived for ten years after superannuation (though it is pressed that he would have had a long life in view of the fact that his father lived up to the age of 85) out of pension, the contribution to the family could be estimated at Rupees 10,000/-. The death-cum-retirement gratuity on the basis of the presumptive average emoluments would have been around Rs. 15,000/-. The entire amount would thus work out at Rs. 1,63,000/-.

In the case of *Sabita Pati v. Ramesh-war Singh* 1973 A.C.J. 319 (Ori), this Court observed :

".....Ordinarily the lump sum amount is discounted by 1/6th committing various eventualities (See *Rajinder v. Union of India* 1970 ACJ 84 (Ori) and *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, . Considering the immediate payability of the insurance policy and other service benefits which must have accrued to the benefit of the deceased under the rules we are prepared to make a further deduction of 1/8th of the compensation estimated as above. There shall thus be a total deduction of 1/6th plus 1/8th. that is, 7/24th....."

Taking into consideration the fact that the claimant-widow has remarried, I am prepared to adopt the aforesaid basis. This would mean that the compensation payable has to be slashed by 7/24. Considering the further feature that the widow has remarried, I am also prepared to deduct another 1/8th. The total deduction, therefore, works out to 10/24 or 5/12, Deducting 5/12 from the sum of Rs. 1,63,000/-, the net amount of compensation comes to a little more than Rs. 95,000/- which may conveniently be rounded off to Rs. 95,000/-.

It is pertinent to mention here that the minor claimant is a girl now aged about ten years. It has been represented to me at the Bar that even though the widow has remarried, she is still looking after the welfare of the daughter and she is being given schooling under her supervision. The minor girl has to be given in marriage in due course. Keeping all these aspects in view, out of the compensation now determined. I direct that a sum of Rs. 25,000/- shall be kept in Fixed Deposit with the State Bank of India to the credit of the minor claimant *Saraswati Nayak*. It would be in the interest of the minor that the interest earned on the Fixed Deposit, may not be disbursed and the Deposit may be made under

a Schema where the interest would be capitalized and a total consolidated amount would be received at the date of maturity. The Deposit may be for a period of minimum ten years. The Claims Tribunal shall ensure that this Deposit is made properly as directed. The balance amount of Rs. 70,000/- shall be payable to appellant No. 1 Smt. Archana Nayak for the benefit of both the claimants.

7. The Tribunal had apportioned the compensation between the Insurer of the truck and the owner of the Station Wagon. On the principle indicated by me in the case of *Golak Chandra Das v. Smt. Kousalya Nayak*, (Miscellaneous Appeal No. 42 of 1974, disposed of on 30-9-1977) 3 1978 ACJ 84 (Ori), this must be held to be a case of composite negligence and in a case of composite negligence, I have held that the liability should be joint and several. In fact, under the provisions of the Motor Vehicles Act, in a case of this type, no power is given to the Tribunal to apportion the compensation. Admittedly, the liability of the Insurer of the truck was Rs. 20,000/- at the time the occurrence took place. Mr. P. Roy appearing for the Insurer has stated that Rs. 4,000/- had been paid to some other claimant and Rs. 16,000/- has already been paid. This fact is also stated in the order of the Tribunal. That being so, the Insurer has no further liability, The entire compensation has to be paid by the State of Orissa and the owner of the truck. Keeping the ratio of the un-reported decision (*supra*) in view, I would direct that for the compensation amount of Rs. 95,000/- minus Rs. 16,000/- i.e. Rs. 79,000/-, the liability of the State of Orissa and the owner of the truck (respondent No. 3) is joint and several and the claimants are entitled to recover the same in accordance with law. On the amount of compensation now determined, i.e, Rs. 79,000/- which remains unpaid, interest at nine per cent will accrue from the date of the application till the date of payment, I do not make any order for, costs of this proceeding.