
(1995) 03 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 138 and 142 of 1992

Smt. Gudu Kanwar and Another

APPELLANT

Vs

Nand Lal and Others

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1996) ACJ 545 : AIR 1995 Raj 236 : (1995) 3 WLC 754

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : B.L. Maheshwari, for the Appellant; B.S. Bhati, Dy. G.A. for R.S.R.T.C. and H.S. Balot, for Driver, for the Respondent

Judgement

B.J. Shethna, J.—The Appeal No. 142/92, filed by the Rajasthan State Road Transport Corporation has already been admitted by this - Court on 9-7-1992. The Appeal No. 138/92 is filed by the claimants, against the same award. Hence, it is also admitted.

Learned counsel appearing for the respective parties waived the service of notices in Appeal No. 138/92.

Both these appeals are heard finally today at the request of the learned counsel for the parties.

2. At an early hour of 1.00 a.m. of 8-10-1987, in a vehicular accident, deceased Narpat Singh, coming on his motor cycle, was knocked down by the bus of the Rajasthan State Road Transport Corporation (hereinafter "the Corporation" for short) coming from opposite direction, driven by the respondent No. 1-- Driver. The widow of the deceased Smt. Gudu Kanwar, Moti Kanwar -- mother of the deceased and Bhawani Singh -- father of the deceased, filed a joint claim petition -- No. 8/88, before the learned M.A.C. Tribunal, Bali, claiming in all Rs. 7,85,000/- compensation from the respondents. However, the Tribunal came to the conclusion that the claimants are entitled for the total claim of Rs. 1,67,000/-

only. The Tribunal also came to the conclusion that the deceased was responsible up to 25 per cent for the accident and, therefore, deducting the amount at the rate of 25 per cent for the contributory negligence of the deceased Nar-pat Singh, the Tribunal awarded in all Rs. 1,25,000/- to the widow and mother of deceased, as father of the deceased died at the age of 76 years during the pendency of the trial. Being aggrieved by the same, the claimants -- widow and mother of deceased have filed Appeal No. 138/92 for enhancing the amount of compensation and the Corporation filed Appeal No. 142/92, stating that the Tribunal has committed an error in attributing 75 per cent negligence to the Driver of the Bus of the Corporation. According to the Corporation, the accident took place solely due to the negligence of the deceased Narpat Singh, the driver of the motor cycle and, therefore, nothing should have been awarded to the claimants.

3. I have heard the learned counsel appearing for the respective parties.

Learned counsel for the appellant-claimants has vehemently submitted that the learned Tribunal has committed an error in attributing 25% (percent) contributory negligence to the deceased. According to him, the accident took place due to the sole rash and negligent driving of the Bus driver, as the Bus driver was driving his Bus in excessive speed, at mid-night hour of 1.00 a.m. with full lights on.

As against that, learned counsel appearing for the Corporation vehemently submitted that the accident took place due to sole negligence of the motor cyclist deceased Narpat Singh.

4. Considering the evidence on record and findings recorded by the learned Tribunal, I am of the view that the learned Tribunal has not committed any error in awarding 75 per cent negligence to the driver of the Bus and 25 per cent negligence to the motor cyclist. Hence, on this count the submissions made by both the learned counsel for the claimants as well as for the Corporation fail and rejected.

5. The next question is -- whether the Tribunal has committed an error in awarding Rs. 1,67,000/- towards compensation?

According to learned counsel for the claimants, the Tribunal has committed an error in applying the multiplier of 30 years and, it ought to have taken 40 years multiplier while awarding the compensation. In support of his submission, learned counsel has placed reliance upon the judgment of learned single Judge of this Court (as he then was) reported in Dayali Bai and Others Vs. State of Rajasthan and Another, In that case, the age of the deceased was only 24 years and the Tribunal awarded 46 years multiplier. I am afraid, I cannot grant multiplier of 40 years, as prayed by the learned counsel. Not one but there are many judgments of various High Courts and of the Supreme Court wherein the multiplier is ordinarily awarded between 15 to 20. In fact, the learned counsel appearing for the Corporation has placed heavy reliance upon two Supreme

Court judgments, reported in National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, and General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, wherein the Supreme Court has applied the multiplier of 15 and 12 years respectively.

6. Under the Motor Vehicles Act, the claimants have to be paid just and reasonable amount of compensation. Applying of the multiplier of either 12, 15, 20 or 40 is hardly material. Ordinarily, the method of applying the multiplier is adopted by the various High Courts but there is no hard and fast rule of applying a multiplier. It has to be applied on the facts of each case.

In the present case, it is a undisputed fact that the deceased Narpat Singh was employed with his employer as a Bus driver on 1-5-1987 at the monthly salary of Rs. 1500/- per month, with daily allowance of Rs. 10/- for tea etc. The employer of the deceased was examined. He has in clear terms stated that at the time of accident the deceased was very much in his service, and driving his delux bus, and also looking after it. In the cross-examination, he has stated that he was paying Rs. 800/- per month salary to an another driver but he specifically denied the suggestion that he was not paying Rs. 1500/- to the deceased Narpat Singh. Much is tried to be made out by the learned counsel for the Corporation. He submitted that when the employer of the deceased admitted in his cross-examination that he is paying Rs. 800/-per moth to his other driver then this Court should accept that he was also paying Rs. 800/- to the deceased Narpat Singh and not Rs. 1500/- per month. If the employer had not specifically denied this suggestion, perhaps some weight could have been attached to this submission but when there is specific denial on the part of the employer for this suggestion and he instead asserted in clear terms that the deceased Narpat Singh was being paid by him Rs. 1500/- per month as salary plus Rs. 10/- daily allowance for tea etc., which would come to Rs. 1800/- per month in all; the suggestion of learned counsel bears no force. The Tribunal has assessed the monthly dependency at the rate of Rs. 400/- per month only, which means Rs. 4800/- per year and multiplying with multiplier of 30, awarded Rs. 1,44,000/- on the head of loss of dependency.

7. I am not prepared to apply 30 years multiplier, which was applied by the Tribunal. It was argued by the learned counsel appearing for the Corporation that the deceased was aged 28 years at the time of accident and not 25 years. Three years here or there would not make any difference. Even if it is taken that he was 28 years of age, then looking to the longevity of life in his family and looking to the fact that his father died at the age of 76 years and his mother is still alive, at 68 years of age, the life of the deceased can be taken at least 70 years. Be that as it may, looking to the peculiar facts and circumstances of this case, I am of the view that 20 years multiplier should be applied and not 12 or 15 years, as suggested by learned counsel for the Corporation and 30 year as submitted by learned counsel for the claimants.

8. Now the next question is that whether the Tribunal has committed an error in

fixing the dependency value at Rs. 400/-?

When there is a clear evidence adduced by the claimants that the monthly salary of the deceased was Rs. 1500/- plus Rs. 300/- per month by way of daily allowance, that means in all Rs. 1800/- per month. It is true that there was slight discrepancy in the evidence of widow and mother of the deceased. Widow stated in her evidence that her husband was drawing salary of Rs. 1500/- per month and, as against that the mother stated that her son was drawing salary of Rs. 1200/- per month. But there is a definite evidence of the employer of the Bus driver who has stated that he was paying Rs. 1500/- per month to the deceased Narpat Singh with Rs. 10/- per day by way of daily allowance. The mother being an old illiterate woman, might have committed mistake in deposing before the Tribunal that her son was being paid Rs. 1200/- as salary per month. The wife could be the best person to state about the income of her husband. She has stated that her husband was drawing salary of Rs. 1500/- per month, which is duly corroborated with the evidence of the employer of the deceased. Therefore, the monthly income of the deceased has to be accepted as Rs. 1500/- per month by way of salary. We cannot also ignore the future rise in the income of the deceased. The deceased died within five months of his employment. If he was getting Rs. 1500/- per month as driver of the Bus, he would have earned much more in future.

Considering all the facts and circumstances of this case and relying on the judgment of the Supreme Court, reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, which was cited by the learned counsel for the Corporation itself, without any hesitation this Court can come to the conclusion that the gross income of the deceased could be assessed at Rs. 2000/- per month. He would have spent Rs. 500/- per month for his personal expenses and, therefore, Rs. 1500/- per month can be taken as income, available to his dependents and applying the multiplier of 20 years, it would come to Rs. 3,60,000/-, the amount of compensation to which the claimants will be entitled by way of loss of dependency and it is awarded.

9. The total amount of Rs. 20,000/- which is awarded by way of loss of company, that is Rs. 15,000/- to widow and Rs. 5,000/- to the mother; is just and proper and is not required to be interfered. In the same way, Rs. 3,000/- has rightly been awarded by the tribunal for medical treatment and cremation etc. Mr. Maheshwari, learned counsel for the claimants rightly submitted that the tribunal has not awarded any pie on the ground of pain, shock and sufferings to the dependents as the deceased did not die on the spot but he died on the next day because of the multiple injuries received by him in the accident. Considering the evidence on record, Rupees 17,000/- can easily be granted on this head, namely, for pain, shock and sufferings. Thus, the claimants are entitled for additional amount of Rs. 17,000/- on this head also and it is awarded.

10. Thus, in all Rs. 3,60,000/- is awarded for loss of dependency value, Rs. 20,000/- in all by way of loss of company to the claimants (Rs. 15,000/- to the

widow and Rs. 5,000/- to the mother of the deceased), Rs. 3,000/- for medical treatment and cremation charges and, Rs. 17,000/- for pain, shock and sufferings. In all, the claimants are entitled for Rs. 4 lacs. There is a contributory negligence of 25 percent on the part of the deceased motor cyclist and, therefore, that amount has to be deducted. Accordingly, Rs. 1 lacs has to be deducted. Thus, the claimants are entitled for net claim of Rs. 3 lacs.

The tribunal has awarded Rs. 1,25,000/- to the appellant-claimants. Therefore, the Corporation is directed to pay the additional amount of Rs. 1,75,000/- to the appellant-claimants, with interest at the rate of 12 percent per annum from the date of the application, with costs.

11. Accordingly, the Appeal No. 138/92 filed by the appellant-claimants is partly allowed and Rs. 1,75,000/- additional amount is awarded with running interest at the rate of 12 per annum from the date of filing application, with costs.

12. As the Appeal No. 138/92, filed by the appellant claimants is partly succeeded, the cross appeal filed by the Corporation, being Appeal No. 142/92, is dismissed, with costs.

13. The additional amount of Rupees 1,75,000/-, with costs and interest, be deposited by Corporation before the learned tribunal; out of which the tribunal will pay Rs. 1 lacs to the appellant claimant No. 2 -- Smt. Moti Kanwar, by account payee cheque in her name and the remaining amount shall be invested in a fixed deposit of any nationalised bank of the choice of Mst. Gudu Kanwar -- widow of the deceased Narpal Singh, for a period of ten years. She shall be paid monthly interest over that amount of fixed deposit, by way of account payee cheque in her name.