

(1987) 08 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous First Appeal No's. 64 and 74 of 1981

Smt. Malti Vishwakarma

APPELLANT

Vs

Sunder Transport Co., Rewa and Others

RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Motor Vehicles Act, 1939 — Section 110B

Citation : (1988) 2 ACC 565 : AIR 1988 MP 215 : (1991) ILR (MP) 36 : (1988) MPLJ 213

Hon'ble Judges : Ram Pal Singh, J;B.C. Varma, J

Bench : Division Bench

Advocate : N.K. Shukla, for the Appellant; S.Q. Hasan and P.C. Naik, for the Respondent

Judgement

Ram Pal Singh, J.

This order shall also dispose of M. A. No. 74/81 (Smt. Nirmala Tiwari v. Tekchand). In both these appeals u/s 110D of the Motor Vehicles Act, the claimants/appellants have challenged the correctness and legality of awards passed by the Motor Accidents Claims Tribunal, Satna, in Claim Cases Nos. 63 and 64 of 1977 by judgment dated 3-11-80.

On 22-8-76 a passenger Bus No. M.P.A. 2983, whose registered owner is respondent No. 1. was proceeding with passengers from Satna to Govindgarh via Bela. The bus is alleged to be over-loaded and is said to be carrying more than hundred passengers. When it passed the embankment road of Lilji dam, beyond Bela towards Govindgarh at or about 11-30 a.m., the front tyres which were not only weak, old and remoulded, suddenly burst and the bus swerved towards dam, fell in the water. The bus was also allegedly being driven rashly and negligently by respondent No. 2. The result was that more than 90 men, women and children died in the liquid grave. Those who could extricate themselves from the watery grave, swam to safety. On receiving the information of this tragedy,

Government machinery moved, rescue operation commenced, a team of doctors examined the dead bodies and in the end the dead bodies were handed over to the relatives with death certificates and post-mortem reports, for final disposal. Claimants/appellants are respectively 19 years and 25 years, widows of Suresh Kumar Vishwakarma and Ravi Shankar Tiwari and it is they, along with other unfortunate claimants, who filed the claims before the Motor Accidents Claims Tribunal. Respondent 3 is the Insurance Company. Smt. Malti, a 19 years widow, in M.A. No. 64/81, originally claimed the compensation before the Tribunal, for the death of her 20 years old young husband, Rs. 4,47,000/- and Smt. Nirmala Tiwari along with her young children, in M. A. No. 74/81, claimed Rs. 2,38,000/-. Respondents 1, 2 and 3 contended before the Tribunal that they are not liable to pay compensation as claimed, but it was the State of M.P. who was the real culprit who had not planted any road signs by the side of the road. They also contended that the Public Works Department of Madhya Pradesh had not maintained the road properly at the site of the accident. They further contended that they had not lifted the passengers more than the permissive limit, but the unfortunate passengers forcibly entered the bus at Bela for reaching their home by evening because of "Khajulaivan" festival.

The learned Claims Tribunal answered the issues by a lengthy common judgment and thus disposing of more than 50 claims pending before it. Issues were answered thus in Claim Case No. 63/80 :

(i) Suresh Kumar, husband of claimant was a passenger in ill-fated bus No. M.P.A. 2983 on 22-8-76 and said Suresh Kumar died in the accident while the vehicle was being driven rashly and negligently.

(ii) Deceased Suresh Kumar was of 20 years of age at the time of his death and his life expectancy was 50 years.

(iii) Deceased Suresh Kumar, after passing High School examination, passed first year of his training as Turner and was studying in second year at the time of his death.

(iv) After completing his training as Turner, Suresh would have contributed Rs. 1800/-per year to the dependents of his family.

(v) Due to untimely demise of Suresh, his dependents were deprived of Rs. 14,400/-only.

Reason for not awarding the costs was given by the Tribunal that the claim filed was inflated.

(vi) Claimant is entitled to receive only Rs. 12000/- as compensation without costs. The Tribunal has evaluated the evidence and has given the reasons for these conclusions from paras 93 to 98 of the impugned judgment.

In claim case No. 64/80, Smt. Nirmala Tiwari claimed compensation of Rs. 2,38,000/- for the death of her 32 years old husband Ravi Shankar Tiwari, who

died in the said accident. The Tribunal answered the issues thus : --

(i) Deceased Ravi Shankar Tiwari was a passenger who died in the accident on 22-8-76 while Bus No. M.P.A. 2983 plunged in the deep waters of Lilji Dam. The said bus was being driven rashly and negligently at the time of the accident.

(ii) At the time of the accident deceased Ravi Shankar was of 32 years of age and would have lived for 28 years more.

(iii) He was giving an amount of Rs. 3600/-yearly to his dependents.

(iv) Claimant is not entitled to any amount of compensation because-

(a) She is receiving family pension of Rs. 46/- p.m.

(b) Commissioner Rewa Division granted her Rs. 500/-.

(c) Claimant received an amount of Rs. 10,000/- from family benefit fund.

(d) Claimant due to the death of her husband has inherited 2 acres of land and 1/3 share in the family house valued at Rs. 12000/- and thus she has benefited from her husband's death and hence her claim was satisfied.

Learned counsel for the claimant/appellant in M.A. No. 64/81 has contended that the claim awarded was not just but also inadequate. In M.A. No. 74/81, the learned counsel contended that the Claims Tribunal has erred in not awarding any compensation to the claimants and the reasons for not awarding the same are not only illegal and unjust but are also irrational and against the settled principles of law. Both the counsel for the appellants and also the counsel for the respondents have cited plethora of case law at the bar on different points. Counsel for both the sides also persuaded us to go through the entire evidence and documents on record.

Without unnecessarily burdening this judgment with case law, we propose to capsule the settled principles of law in brief. Compensation awarded should neither be punitive to the person against whom the claim is decreed nor should it be a source of profit to the person in whose favour it is decreed. u/s 1A of the Fatal Accidents Act, damages are to be based on reasonable expectation of pecuniary benefit or benefit reducible to money value. The pecuniary loss has to be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other any pecuniary benefits which, from whatever source come to them by reason of death i.e. the balance of loss and gain to the dependents by the death must be properly ascertained. Firstly the deceased man's expectation of life has to be estimated having regard to his age, bodily health and possibility of premature determination of his life by later accidents. Secondly the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime and other circumstances; thirdly the estimated annual sum is multiplied by the number of years of the man's estimated span of life and the said amount should be discounted so as to arrive at the equivalent in the form of lump sum

payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of other interest in his estate and fifthly further amounts have to be deducted for the possibility of wife dying earlier if the husband had lived the full span of life. It has to be remembered that the compensation to be assessed is the pecuniary loss caused to the dependent by the death of the person and for the purpose of calculating just compensation, annual dependency of the dependents should be determined in terms of annual loss accruing to them due to the abrupt termination of life. "Dependency" means measure of maintenance or support which the dependent received from the deceased. There are numerous modes of calculation but the ultimate goal of them is to arrive at a figure which would represent the purchase of dependency for a number of years which would be much shorter than the number of years for which the deceased was expected to live. Balance of loss and gain to claimants has primarily to be kept in view. At the same time the mandate in *M.P.S.R.T.C. v. Sudhaker* AIR 1977 SC 1189 has to be kept in view while determining the just compensation. In this case the Supreme Court observed as under : --

"But in assessing damages certain factors have to be taken note of which the High Court overlooked such as the uncertainties of life and the fact of accelerated payment that the husband would be getting a lump sum payment which but for his wife's death would have been available to him in dribs and drabs over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors in assessing damages."

When a person is on the threshold of his career and in his twenties, his income is less and hence his contribution to the family is lesser but he has a longer period to serve and as such a higher multiplier is called for. As he grows old his income and contribution to family increases and he has lesser period to serve, a lower multiplier is justified. This principle sounds reasonable and once it is adopted the Tribunal has to determine the income and the amount the deceased was spending on the dependents per month. This yearly amount then be multiplied by 12. It is this sum to which the multiple of 16 is to be invoked to arrive at the amount to be awarded as compensation. This multiple of 16 has now been accepted as just and proper. Each case presents its own unique picture and there cannot be any hard and fast rule that can be uniformly applied to all the cases of compensation. In *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, , Supreme Court observed as under :

"There cannot be 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 language of Section 110-B of the Act warrants the Tribunal to determine the amount of compensation which appears to be just. In essence, the dependents are entitled to a just compensation for the loss. In a way, the question is liberated from the shades of narrow technicality and has to be decided on the larger perspective of justice, equity and good conscience. The language of such wide amplitude as used in Section 110-B of the Act undoubtedly gives the Court some leverage and allows room to determine as to what indeed would be just compensation to ameliorate the loss to the dependents of deceased victim.

In the light of these principles, we now proceed to examine the correctness and legality of the impugned award. We are aware that the conclusions of the Tribunal are not to be lightly disturbed unless they are found to be unjust and improper. In M.A. No. 64/81 the finding of the tribunal is that the deceased was only 20 years of age, his life expectancy was 50 years, deceased would have earned Rs. 300/- p.m. from the age of 25 years and would have contributed half of his earning i.e. Rs. 1800/- per year towards the maintenance of the claimant. Tribunal had calculated 8 years of expectancy i.e. $\text{Rs. } 1800 \times 8 = \text{Rs. } 14400/-$ only. This multiplier of 8 seems to be inadequate and unjust for assessing the claim on the death of the husband of the claimant. If the multiplier is increased to 10 then $\text{Rs. } 1800 \times 10 = \text{Rs. } 18,000/-$ and this amount of compensation appears to us to be just and proper. The Claims Tribunal has awarded an interest of 6% P.A. The rate of interest in these days of inflation and also looking to the rate of interest given by the bank, appears to us to be very low. At or about the time the award was made the rate of interest was near 9% P. A. In 1986-87 the prevalent rate of interest on deposits by the Govt. or the bank was being paid at the rate of 12% P.A. It would be just and proper if the rate of interest on Rs. 18000/- is awarded at the rate of 12% P.A. from the date of the award. The Tribunal chose to deduct an amount of Rs. 1800/- an ex gratia grant which was immediately given to the claimant by the State on the death of her husband. This deduction is in accordance with the principles laid down in *Kashmirah Mathur*, a Full Bench judgment of this court *Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another*, . Thus total compensation the claimant is entitled to is Rs. 16200/- and she is also entitled to receive on this amount an interest at the rate of 12% P. A. from the date of award i.e. 3-11-80. Other findings of the Tribunal appear to be just and proper and does not require any interference in appeal.

We shall now consider M.A. No. 74/81 in which the Tribunal has refused to award any compensation to the claimant. We have already noted the findings of the Tribunal in detail in this judgment. The tribunal has held that the deceased was contributing an amount of Rs. 3600/- to the claimants. The deceased was a Govt. servant and on his death the claimant widow is yetting Rs. 46/- P.M. as family pension Life expectancy of the, deceased was assessed at 15 years more. But the tribunal has reasoned erroneously that as the claimant has received an ex gratia grant of Rs. 500/- from the Commissioner, Rewa Division plus an amount of Rs. 10,000/- from family benefit fund along with Rs. 5000/- Insurance

amount, she has thus received more than Rs. 9000/- the amount assessed as compensation, hence the claim is satisfied. The Tribunal has also erroneously held that on the death of her husband she has also inherited 2 acres of land and Rs. 12000/- as share from the ancestral house of the deceased. Tribunal further concluded that the claimants have benefited thus from the death of the deceased. Those findings, are not only erroneous but are also contrary to settled principles of law. The Tribunal completely lost sight of *Kashmirah Mathur* (supra). In this case the Full Bench of this Court has held that insurance amount provident fund, gratuity and family pension are not deductible from the amount of compensation except the ex gratia grant. Keeping in view *Kashmirah Mathur*, we are of the opinion that the amounts deducted from the compensation amount by the tribunal, except ex gratia, grant of Rs. 500/-, are not just and proper. To calculate, amount of compensation awarded by the Tribunal was Rs. 9,000/-. Ex gratia grant of Rs. 500/-only should be deducted from this amount. Like *Smt. Malti* in M.A. No. 64/81, the claimants are also entitled to a rate of interest at 12% P.A. on the total amount of Rs. 8500/-the now assessed amount of compensation.

In both these appeals counsel fee is quantified at Rs. 3560/-. The appellants in addition shall also get the costs of both the Courts from the respondents.

Thus M.A. No. 64/81 is partly allowed and the award of the Tribunal is modified to the extent indicated above. M.A. No. 74/81 is allowed and the award of the Tribunal is set aside and it is directed that the claimant/appellant shall get an amount of compensation of Rs. 8500/- which shall carry interest at the rate of 12% per annum from the date of award i.e. 3-11-80. In both these appeals the claimants shall get the compensation, interest and costs from the respondents jointly and severally.