
(1983) 05 AHC CK 0022
In the Allahabad High Court
Case No : F.A.F.O. No. 66 of 1979

Smt. Radha Agarwal and Another	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 13-05-1983

Acts Referred:

Evidence Act, 1872 — Section 3
Motor Vehicles Act, 1939 — Section 110B

Citation : (1984) 1 ACC 386 : AIR 1984 All 119 : (1983) 9 AWC 638

Hon'ble Judges : K.N. Singh, J;D.N. Jha, J

Bench : Division Bench

Advocate : Shambhu Nath Agarwal, V.N. Agarwal Allahabad and S.D.N. Singh, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—This is a claimant's appeal against the award of the Motor Accidents Claims' Tribunal, Sitapur, dated 7-2-1979, awarding a sum of Rs. 1,53,795.34 p. as compensation.

2. Ram Kishore Agarwal, a young man of 28 years was in the employment of the State of Uttar Pradesh as Assistant Engineer in the Irrigation Department. On 3-8-1977 he was travelling in a Government vehicle--a jeep bearing number UTE 4698, from Lucknow to Sitapur, on official duty, The vehicle was being driven by Hemnath who was also in the employment of the State of Uttar Pradesh as driver. A number of other persons were sitting in the vehicle. After covering a distance of 40 to 45 Kms. the driver lost control of the vehicle and it swerved to its right side and collided with the trunk of a tree on the right side of the road as a result of which the occupants including Ram Kishore received severe injuries. Ram Kishore Agarwal received severe injuries on his head and leg. He was rushed to the hospital where he succumbed to the injuries. He left behind Smt. Radha Agarwal, as his widow and Km. Lakshmi Agarwal, daughter, aged 6 months. The widow and the daughter both filed a claim petition u/s 110-A of the

Motor Vehicles Act claiming compensation for the death of Ram Kishore Agarwal. The State of Uttar Pradesh contested the petition. Both the parties produced oral evidence. The Motor Accidents Claims" Tribunal on appraisal of the evidence on record held that the accident occurred on account of rash and negligent driving of the vehicle and the State was responsible for the act of its employee and as such it was liable to pay compensation to the claimants. The Tribunal further held that the claimants were put to a loss of Rs. 1,53,795.34 paise and the State was liable to pay that amount as compensation along with interest at the rate of 6 per cent per annum. The claimants were not satisfied with the amount of compensation, they have therefore preferred this appeal u/s 110-D of the Act.

3. Learned counsel for the claimants urged that the amount determined by the Tribunal was inadequate as the Tribunal failed to take into account the increments which may have been earned by the deceased and the promotions which may have been granted to him. By passage of time the deceased would have drawn salary in higher grade and he would have contributed higher amount of money for the welfare of the claimants. Learned counsel further urged that the deduction of the amount of family pension as well as the deduction of the amount paid to the claimants on account of insurance policy and gratuity was not permissible.

4. The deceased was in Government service on the date of his death. Had he remained alive, he would have retired from Government service at the age of 58 years on attaining the age of superannuation. The Tribunal was not right in determining the compensation treating the deceased to have remained in service up to 60 years. The deceased was receiving a salary of Rs. 1,008/- per month as Assistant Engineer. He was in Government service. He was required to do touring on Government work. He would be putting on good clothes and must be spending about Rs. 500/- on his person and his contribution for the welfare of his wife and six months" old child must be not more than Rs. 500/- per month. The Tribunal is not right in holding that the deceased must have been paying a sum of Rs. 808/- per month to his wife and child. It is difficult to imagine that a Gazetted Government servant would be able to maintain himself properly with a paltry sum of Rs. 200/- per month. It is true that the widow of the deceased Smt. Radha Agarwal has stated that her husband had been spending only a sum of Rs. 150/- or so on himself and the remaining amount he used to give to her for family expenses. We are not inclined to accept the testimony of Smt. Radha Agarwal on this question. She is highly interested witness. Having regard to the circumstances in which the deceased was placed we are of the opinion that he must have been spending a sum of Rs. 500/-for his own welfare and maintenance including fooding, clothing and entertainment and he would be contributing only Rs. 500/-for the welfare of the family per month. The claimants were deprived of this amount for a period of 30 years. The total amount which the claimants would have received would be Rs. 500/- x 12 x 30 = 1,80,000/-. This represents the loss from salary.

5. The Tribunal fixed the longevity of the deceased at 60 years. We are of the opinion that of late medical facilities have greatly increased as a result of which longevity has increased. In *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, , the Supreme Court held that in the present economic condition the life of an average Indian has increased and as such it would be reasonable to expect longevity till the age of 65 years. The deceased could have therefore lived up to the age of 65 years. Even after his retirement the deceased would have received pensionary benefit and being a technical person he could have employed himself to some avocation. There is no evidence on record to show as to what amount of pension the deceased would have derived after his retirement but we think that the amount of pension would not have been less than Rs. 400/- per month. The deceased's income from other sources would have been about Rs. 500/- per month, out of which the petitioner could have spent and contributed a sum of Rs. 400/- per month towards maintenance of his wife only as his daughter would have been married much before his retirement from service. The deceased's contribution for the welfare of the widow at the rate of Rs. 4,800/- per annum for a period of seven years comes to Rupees $4,800 \times 7 = 33,600/-$. Thus in all the claimants were put to a pecuniary loss of Rs. 1,80,000/- plus Rs. 33,600 = 2,13,600/-.

6. In assessing damages certain other factors have also to be taken into account, such as uncertainties of life and the fact of accelerated payment that the claimant would be getting a lump sum payment which but for the death of deceased would have been available to him in driblets 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 the 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 having taken into account these imponderable factors. See *M. P. S. R. T. C. v. Sudhakur* AIR 1977 SC 1189, In our opinion, a deduction of 25% should be made from the amount of compensation as the claimants would have received the amount determined earlier in driblets spread over for a period of 37 years. Making deduction at the rate of 25 per cent the total amount comes to Rs. 1,62,000/-. This amount, in our opinion, represents the amount of compensation payable to the claimants. The Tribunal has awarded a sum of Rs. 1,53,000/-, which appears to be reasonable figure and we do not find any reason to disturb.

7. Learned counsel for the claimants urged that no deduction on account of lump sum payment should be made. He cited a number of authorities--*Maj. Jagjit Singh v. Kartar Singh* 1973 Acc CJ 147; *Kailash-wati v. Haryana State* 1974 Acc CJ 514 : AIR 1975 HP 35; and *Ganga Devi v. Municipal Corporation of Delhi* 1980 Acc CJ 364 (Delhi). None of these authorities lay down clearly that no deduction on the basis of lump sum payment is permissible, besides in each case the question of compensation was considered on its own facts and circumstances. We have already pointed out that the Supreme Court has in the case of *M, P. S. R. T.*

C. (supra) laid down clearly that such a deduction must be made in determining the compensation. The dictum laid down by the Supreme Court is binding, as such we consider it proper and reasonable to make the deduction on account of lump sum payment. Having regard to the facts and circumstances of the case we think it would be reasonable to make deduction at the rate of 25%.

8. Learned counsel urged that the Tribunal committed error in deducting family pension and the amount of insurance policy and gratuity. We agree with the contention of the counsel for the claimants. The family pension awarded to the claimants could not be deducted from the amount of compensation as the pecuniary benefits would have been earned by the deceased if he had remained alive. It is not permissible to deduct the amount of insurance policy, gratuity of provident fund as held by a Division Bench of this Court in *Smt. Kaushalya Devi v. Housing and Development Board* (F. A. F. O. No. 297 of 1975) decided on 15-7-1981. Even though we disagree with the view taken by the Tribunal we do not consider it proper or necessary to disturb the amount awarded represents a reasonable figure of compensation as discussed earlier.

9. Learned counsel for the appellants then urged that the Tribunal failed to consider the increments which the deceased would have earned and the increments and promotions which may have been earned by the deceased in service. According to the learned counsel by passage of time the deceased could have earned maximum seals and could have been promoted to the post of Executive Engineer, Superintending Engineer or may be to the apex position of Chief Engineer. The Tribunal should have therefore determined the compensation on the basis of the salary which the deceased would have earned on the aforesaid post. It is true that while considering the pecuniary loss, increments and promotions should be taken into account but in the instant case, there is no evidence at all on record to show as to what was the scale of salary in which the deceased was working on the date of accident. There is further no evidence as to what increments he would have earned rat the years to come. There is no iota of evidence on record as to when he would have been promoted to the higher post and in what pay scale of service. No witness or record from the Accountant General's office or from the Irrigation Department was produced to prove these matters nor any certificate or documentary evidence was filed showing the increments and the maximum grade or the chances of promotion of the deceased. In the absence of evidence it is not possible to take into account the increments and the promotions which the deceased may have earned.

10. For the reasons stated above we are of the opinion that even though the Tribunal committed error in arriving at the amount of compensation but the amount determined by it is reasonable which does not call for any interference. The appeal fails and is accordingly dismissed, but there will be no order as to costs.