

(1986) 05 GAU CK 0011
In the Gauhati High Court
Case No : M.A. (F) No. 64 of 1978

Smt. Saminder Kaur and Another	Vs	APPELLANT
The Union of India (UOI) and Another		RESPONDENT

Date of Decision : 08-05-1986

Acts Referred:

Fatal Accidents Act, 1855 — Section 1, 1A
Motor Vehicles Act, 1939 — Section 100C, 100D, 100F, 110A, 110B

Citation : (1987) ACJ 7 : (1986) 1 GLR 446

Hon'ble Judges : Palem Chennakesav Reddi, C.J.; T.C. Das, J; S.N. Phukan, J; R.K. Manisana Singh, J; K.N. Saikia, J

Bench : Full Bench

Advocate : A.M. Lodh, for the Appellant; R.P. Kakati, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

P. Chennakesav Reddi, C.J.—"Is there any commitment existing in the policy and provision of Section 110B of the Motor Vehicles Act (hereinafter referred to as the Act) to a shared sense of values of "life and morals" by the contemporary society? Are the Courts to pay lip service to the traditional dogma that the Court was merely to construe the provision, or, should the Courts bear in mind that the supreme duty is to award just compensation within the considerable range of movement?"; are the questions of general interest and immense importance that really arise for resolution in this case. When the case came up for hearing before a Division Bench of this Court consisting, of Dr. T.N. Singh and Manisana Singh, JJ., the learned Judges felt that the Full Bench decision of this Court in Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc., on the question whether pecuniary advantages accrued by reason of the death by motor accident have to be taken into consideration while assessing compensation payable to the dependents of the deceased u/s 110B of the Act requires reconsideration in view of the later decision of the Supreme Court in N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, So the learned Judges referred the following three questions for decision to a larger bench.

(1) Whether gratuity, family pension and other benefits attached to the service conditions of to employee are deductible from compensation payable under the Motor Vehicles Act to his legal representatives in the case of his death in a motor accident?

(2) If and when any amount due under a policy of Insurance taken by the deceased can be deducted in such a case?

(3) Whether the tort-feosor in such cases is entitled to set of any advantage derived from him by any legal representative and, if so to what extent?

2. The facts and circumstances giving rise to the questions are neither disputed nor long drawn out. A motor accident took place on the Kunjaban road of Agartala opposite to N.P.C.C. Rest House near Shyemali Bazar on 31.7.71 at about 8.45 P.M. A military vehicle of the Indian Armed Forces Unit, Tripura stationed at Agartala knocked down one Arjun Singh who was riding on a scooter along with his wife and minor daughter in the opposite direction. Arjun Singh died the spot and his wife received minor injuries. The child luckily escaped unhurt. At the time of the accident, Arjun Singh was working as an Assistant Engineer of the Central P.W.D. and was on deputation as such under the Government of Tripura. He was drawing a monthly salary of Rs. 782.50 in the scale of pay of Rs. 350-25-500-30-830-35-900/-. The legal representatives of the deceased, namely, his wife and daughter filed a petition against the Union of India before the Court of the Motor Accident Claims Tribunal, Tripura, Agartals u/ s 110A of the Act claiming compensation of Rs. 5,00,536/-. The wife was later appointed on compassionate grounds as L.D.C. in the Central P.W.D. on a monthly pay of Rs. 525/-. She was then aged 32 years. The application was resisted by the Union of India on the main grounds, inter alia, that the accident was not due to any negligence or rash driving of the military vehicle and that in any event the claim for compensation was highly exaggerated and excessive. The Tribunal found that the accident did take place due to the rash and negligent driving of the military vehicle and, accordingly, the Tribunal held that the claimants were entitled to a compensation of Rs. 2,50,100/-. However, the Tribunal held that the claimant received the following benefits on the death of her husband:

(a) By way of insurance policy of her late husband Rs. 24,000.00

(b) Her employment at a monthly pay of Rs. 525.00 Rs. 1 ,63,800

(c) Family pension of Rs. 96.00 per month Rs. 38,016.00

(d) Gratuity Rs. 4,000.00

Total? Rs. 2,29,816 00

3. Deducting this total amount of pecuniary benefits, the Tribunal struck the balance of compensation at Rs. 20,284.00 i.e. the round sum of Rs. 20,300.00. The Tribunal also awarded a sum of Rs. 10,000.00 as compensation for loss of

consortium and mental suffering to the wife, Thus, the Tribunal awarded a total compensation of Rs. 30,300.00; but again deducted 20% of the amount due to uncertainties of life of the deceased and a further 10% of the amount due to the claimants getting the amount in lump sum, by relying upon the Full Bench decision of this Court in Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc., After making the above deductions, the Tribunal granted a compensation of Rs. 21,210.00. It directed the Union of India to pay the entire amount with interest at 6% per annum from the date of the application till the date of payment.

4. Aggrieved against the said decision, the claimants preferred the appeal. No appeal has been preferred by the Union of India.

5. It was urged on behalf of the claimants that the benefits received by the claimants by reason of the death could not be deducted legally from the amount which the claimants were entitled to get as compensation u/s 110B of the Act for the death of the deceased husband of the first claimant.

6. The first question is whether any benefits received or may be received by the legal representatives of the deceased consequent to his death in an automobile accident, such as, insurance policy amount, family pension, gratuity, provident fund, etc., are deductible from the amount of compensation which the claimants are found to be entitled u/s 110B of the Motor Vehicles Act.

7. Section 110B of the Act does not belong to the esoteric branch of the law. The provision belongs to the sphere of the important branch of law of practical importance and application. The provision has to be interpreted in an apocalyptic manner. Section 110B, which provides that the amount of compensation to be paid to the claimants must be just, reads as follows:

110-B. Award of the Claims Tribunal.- On receipt of an application for compensation made u/s 110A the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid, and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

8. The word "just" employed in the section is of very wide amplitude. The provision does not admit payment of lip service to the traditional dogma that the Court was merely construing, the provision. While construing the provision the Court should bear in mind that its supreme duty is to award just compensation within the considerable range of movement. The interpretation must be meaningful since a commitment exists in the policy of the Act and the provision to a shared sense of values.

9. That commitment to shared values of "life and morals" by the contemporary

society should be ensured and assured. When, confronted with a choice between "logic in the law" and "life" or between "logic" and "experience", it is necessary to inquire closely whether what we are discarding is really logic and what we are accepting is defiance of accepted moral standard. The provision is not designed to compensate the dependants for actual losses. It is intended to put the dependants in the position they would have been in had the deceased been alive.

10. Now, let us examine the meaning of the word "compensation". According to the Webster's third New International Dictionary, the word "compensation" means "the act or action of making up, making good, or counterbalancing; rendering equal; amending." Black's Law Dictionary (Fifth Edition) gives the meaning as "equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another An act which a court orders to be done, or money which a Court or other tribunal orders to be paid, by a person whose acts or commissions have caused loss or injury to another, in order that thereby the person damaged may receive equal value for his loss, or be made whole in respect of his injury." In the Oxford English Dictionary the meaning of the term is given as "the action of compensating, or condition of being compensated; counterbalance, rendering of an equivalent requital, recompense. That which is given in recompense, an equivalent rendered, remuneration, amends." In ordinary parlance "the expression Compensation" means anything given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay", (vide, State of Gujarat Vs. Shantilal Mangaldas and Others,

11. Justice Krishna Iyer, speaking for the Court in *MIS Concord of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, observed:

The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb" in free country in generous scales.

12. The supreme duty of the Court is therefore to award just compensation within the considerable range of movement and commitment in the policy of the provision to a shared sense of values of life and morals by the contemporary society. When the amount of compensation is determined by the Tribunal, the amount of compensation is determined by the Tribunal, that the deductions claimed are proper and permissible.

13. We shall now take up question No. 1 relating to the permissibility of deduction of gratuity, family pension and other benefits attached to the service conditions of an employee. When a Government servant retires, he becomes entitled to provident fund, pension and gratuity benefits. Provident fund, or pension; or gratuity are the deferred Payments of satisfactory service, savings and contributions of the deceased employee. These amounts his family would have in any case been entitled to get whether the employee died a natural death

or died in an accident. Therefore, they ought not to be taken into consideration for determining the amount of just compensation, as they cannot be termed as pecuniary benefits. As regards family pension, the widow of a Government employee would be entitled to under the service conditions. We do not think that it is benefit received by the widow and the wrong doer should be allowed to take advantage of the family pension and gain by it.

14. Question 2 relates to life insurance amount. Payment received for life insurance cannot also be considered as a benefit received by the widow or dependants of the deceased. Insurance money was payable because premiums were paid by the deceased and a contract was entered into for such payment on death. The insurance money is never payable just on account of the death of the person in the motor accident. It became payable because the deceased had bought with his own money an insurance policy. The family of the deceased was deprived of the benefit of the premium amounts. The tort-feasor cannot be permitted to gain by the deduction of the insurance policy amount. So, the insurance amount has to be kept out of consideration for determining the just compensation.

15. It would be apposite at this stage to turn our attention to judicial precedents. The judicial opinion on the question sharply divided and not uniform. On one side is the somewhat liberal view that insurance amount, provident fund, pension or gratuity are not deductible from the amount of compensation and the idea itself would, be revolting to the ordinary man's sense of justice and therefore, would be contrary to public policy. On the other side is the narrower and stricter opinion that the dependants' actual financial loss alone should be determined in the award of compensation and any financial gains that have accrued or may accrue by virtue of the death should be taken into consideration.

16. The earliest ruling in the question it contained in the celebrated case of *Bradburn v. Great Western Rly. Co.* (1874) L.R. 10 Exch. 1. Repelling the contention that the amount of accident insurance payable to the injured should go in mitigation of the liability in damages of defaulting railway, it was observed:

The jury have found that the Plaintiff has sustained damages through the Defendants' negligence to the amount of 217 L., but it is said that because the Plaintiff has received 31 L. from the office in which he insured himself against accidents, therefore the damages do not amount to 217 L. One is dismayed at this proposition. In *Dalby v. Indian and London Life Assur. Co.* (1854) 15 CB 365, it was decided that one who pays premiums for the purpose of insuring himself, pays on the footing that his right to be compensated when the event insured against happens is an equivalent for the premiums he has paid; it is a *quid pro quo*, larger if he gets it, on the chance that he will never get it at all. That decision is an authority bearing on the present case, for the principle laid down in it applies and shows that the Plaintiff is entitled to retain the benefit which he has paid for in addition to the damages which he recovers on account of the Defendant's negligence.

17. However, more recently, Lord Reid in *Parry v. Cleaver* (1969 1 All E.R. 555) put it more pithily as follows:

It, would be revolting to the ordinary man's sense of justice and therefore, contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large, and that the only gainer would be the wrong doer.

18. A full Bench of the Punjab and Haryana High Court in *Bhagat Singh Sohan Singh v. Om Sharma* AIR 1983 Panch 94, after a survey of all the English and Indian precedents observed:

On the basis of legislative history, general principles and the language of Section 110B and on authoritative precedent, insurance benefits accruing to the deceased victim of an automobile accident are not to be taken into account for assessing just compensation to the dependants.

19. Dealing with the financial benefits like provident fund, family pension and gratuity, the learned Judges said:

...the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents of statutory service rules, employment contracts, or beneficent legislation rooted in the employment of the deceased. To attribute these payments entirely to the fortuitous circumstances of the accident and the resultant death, appears to me as untenable. It is more than plain that if the deceased happened to be a person who was not in the employment at all or one who had neither made any contribution to any provident fund nor tendered qualifying satisfactory service entitling him to gratuity or made any payments for a family pension then none of these benefits would arise to his dependants despite his death. It is indeed the aforesaid preconditions which are the true fountain head for these benefits and not ipso facto the incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction (which sometimes has unfortunately gone unnoticed) between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation or the death of the employee, I am clearly of the view that provident fund; family pension or gratuity fall clearly in the latter class.

20. To the same effect is the decision of a Division Bench of the Gujarat High Court in *Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others*, The Delhi High Court in *Bhagawanti Devi v. Ish Kumar* 1975 ACJ 56 and relying on *Parry v. Cleaver* held that even in the context of a fatal automobile accident no deduction on account of gratuity, pension, provident fund and insurance could be allowed u/s 110B of the Act.

21. The Himachal Pradesh High Court in *Mrs. Rita Arora and Others Vs. Salig*

Ram and Others, categorically held that insurance amount provident fund, gratuity and family pension were not deductible from the compensation payable to the dependants. In Padmadevi Shankarrao Jadhav and Others Vs. Kabalsing Garmilsing Sardarji and Others, a Division Bench of too Bombay High Court held that deduction from the compensation amount received by the widow towards gratuity, provident fund or family pension was not proper. The Delhi High Court in Surendra Kaur v. Dharam Singh AIR 1985 Del. 72 observed.

...There was no justification for the Tribunal to have allowed deductions towards provident Fund, gratuity, pension and other savings of the deceased which the legal representatives get after his death. They had come as a result of his service career and by dint of his own efforts and service put in. None of them could be attributed as compensation for causing death by rash and negligent driving.

22. The Rajasthan High Court in Smt. Chand Kanwar Vs. Mannaram and Others, held that the payment of insurance and gratuity cannot be deducted from the compensation awarded in the accident claim cases.

23. The Supreme Court in N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, held that the High Court was in error in reducing the compensation as awarded by the Tribunal by the amount of monetary benefits received by the widow by way of pension at the rate of Rs. 120/- p.m.

24. The learned Counsel for the Respondents relying on the decisions of the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, and in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., sought to garner great support for his submission that in calculating the pecuniary loss to the dependants many imponderable enter into the calculation and the general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimants of the future pecuniary benefit and, on the other, any pecuniary advantage which from whatever sources come to them by reason of the death.

25. The Supreme Court in the first of the two cases was concerned with an appeal which arose out of a suit for damages u/s 1 of the Fatal Accidents Act, 1855, The Supreme Court observed that Section 1 of the Fatal Accidents Act "is in substance a reproduction of the English Fatal Accident Acts, 9 and 10 Vict. Ch. 93, known as the Lord Campbell's Acts. The scope of the corresponding provisions of the English Fatal Accidents Acts has been discussed by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601. There, Lord Russel of Killowen stated the general rule at Page 606 thus:

The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered

separately.

26. After referring to the observation of Lord Wright at Page 611 and the same principle restated by Viscount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 AC 601 Subba Rao, J. (as he then was) speaking for the Court said:

...the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is the balance of loss and gain to a dependant by the death must be ascertained.

27. So, in this case the Supreme Court had no occasion to consider the scope and sweep of Section 110B of the Act.

28. In the second case, Hegde, J., speaking for the Court, observed as follows:

Under Section 110B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1895 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.

29. These observations of the Supreme Court substantially support the view above expressed by us on the width and amplitude of Section 110B of the Act. There is a marked difference between the language employed in Section 1A of the Fatal Accident Act (original Section 1, renumbered as Section 1A by Act 3 of 1951) and Section 110B of the Motor Vehicles Act. Section 1A of the Fatal Accidents Act speaks of damages to be awarded by the Court. In an action or suit by the family of the deceased, as may be considered proportionate to the loss to such party, resulting from such death. The Fatal Accidents Act is of general nature and confers right to sue on the families for loss occasioned by wrongful act, negligence, or default of another. On the other hand, the provisions of Sections 100 to 100F of the Motor Vehicles Act, substituted by Act 100 of 1956, are specifically designed to adjudicate upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles by specially appointed tribunals-Motor Accidents Claims Tribunals. The basis of the claim for compensation before the Tribunal must be an accident arising out of the use of a motor vehicle. The policy and commitment behind is obvious-to provide a speedy and effective remedy for settlement of claims for compensation by the dependants of the deceased, or injured persons in an automobile accident. Therefore, it would follow by the application of the well known cannon of construction "Generalia specialibus non derogant" i.e., general provision will not abrogate special provisions. The special provisions of

Motor Vehicles Act (Section 100 to 100F) are directed towards a special class of cases to which the principles laid down for determination of damages under the general law the Fatal Accidents Act, cannot strict sensu be attracted.

30. Now, we may look at the other line of cases which have expressed the contrary opinion allowing the tortfeasor to take advantage in mitigation of the compensation that he has to pay. A Full Bench of the Gauhati High Court in *Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc.*, expressed the view that while calculating the amount of compensation, the advantages accruing to the claimants on the death of the deceased on whom they were dependant have to be taken into account. In that case, the learned Judges were concerned with the question whether the amount received by way of provident fund by the legal heirs of the deceased was liable to be deducted from the amount of compensation. The same view has also been expressed by the *Smt. Sushila Devi and Others Vs. Ibrahim and Another*, and the Orissa High Court in *Orissa Road Transport Co. Ltd. v. Sibabanda Patnaik 1979 A. C.J. 45 (Orissa)*.

31. For the reasons already recorded, we are unable to agree with all respect to the learned Judges with the view expressed in the Full Bench decision of this Court in *Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc.*, We, accordingly, overrule the decision in *Hira Devi's* case in respect of the points raised in the reference and record our respectful dissent from the views expressed by the Madhya Pradesh and Orissa High Courts in the decisions referred to above.

32. There still remains the question whether the salary received by the widow, who has been employed in the Central P.W.D. as a clerk on a monthly pay of Rs. 525/- in the scale of pay of Rs. 260-400/- on compassionate ground should be deducted from the amount of compensation. At the time of her appointment she was 32 years of age. A sum of Rs. 1,63,800.66 was deducted on the ground that she would earn a sum of Rs. 1,63,800.66 during her entire life. She has got a minor daughter. She was not employed at the time of the death of her husband. Probably, she would not have gone out to work but for the death of her husband, she has now accepted the job. The young child is denied of parental care by the employment of her mother as a clerk. No doubt, the employment she got from the wrong doer on compassionate ground. It is undoubtedly a benefit to be taken into consideration. What is the percentage of the salary to be deducted from the amount of compensation This has to be determined on an effective evaluation of the concomitant facts and circumstances of each case. As we are only answering the questions referred to us, we leave it to the Judges disposing of the appeal to determine the question as to the quantum that would be proper to be deducted from the compensation.

33. We, therefore, answer the questions (1) and (2) in the negative and in favour of the Appellants. We answer question No. (3) in the affirmative leaving the extent to which the tortfeasor is entitled to set off the benefit to be determined by the Bench disposing of the appeal.

34. The reference is answered accordingly.

35. The appeal shall now be listed before a Division Bench for hearing as expeditiously as possible.