
(1997) 07 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 143 of 1991

State of Himachal Pradesh

APPELLANT

Vs

Ram Swaroop and Others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 92A

Citation : (1999) ACJ 558 : (1998) 1 ShimLC 276

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Srinivasan, C.J.—The reasoning in F.A.O. No. 187 of 1991 will apply in this case insofar as it relates to the negligence on the part of the truck driver which led to the accident and also vicarious liability of the appellant. In fact the claimant No. 1 in this case is the same as the claimant in F.A.O. No. 187 of 1991, he being the husband of the deceased in the present case. In that case the deceased was a minor daughter, one of the children of the claimant No. 1. In this case the other children of the claimant No. 1 have also joined as claimants as the claim is with regard to the wife of the claimant No. 1 who died in the

2. The Tribunal has taken the view that the deceased was contributing a sum of Rs. 1,000 per month by doing various domestic and agricultural work to the prosperity of the family. However, he adopted a multiplicand of Rs. 400 per month for calculating the loss of dependency to the claimants. Thus, according to the Tribunal the annual loss would come to Rs. 4,800 and by multiplying the same by 18 he arrived at a sum of Rs. 86,400. He added a sum of Rs. 30,000 as loss of a living being of the family, Rs. 3,000 for funeral expenses and Rs. 1,000 as litigation cost, thus making a total sum of Rs. 1,20,400. We can straightaway point out that the award of Rs. 30,000 for the loss of living being of the family and Rs. 1,000 as litigation cost is unsustainable.

3. As regards the loss of dependency it is not possible to work out in terms of money the services rendered by the wife of the claimant No. 1 who was also mother of other claimants. We have considered this question in detail in *Rajan Bus Service Pvt. Ltd. Vs. Parhalad Chand Sharma and Others*, to which one of us was a party. We have pointed out that in such cases the compensation has to be given on the basis of loss of consortium and mental agony suffered by the claimants. The relevant discussion is found in paras 18, 19 and 20 of that judgment, which read as follows:

(18) In F.A.O. (MVA)No. 33 of 1988 compensation was claimed by claimants to the tune of Rs. 1,65,860 u/s 110-A and Rs. 15,000 u/s 92-A of the Motor Vehicles Act. The Tribunal awarded a sum of Rs. 48,000 as total loss of dependency and added Rs. 3,000 as the conventional damages suffered by the claimants due to loss of expectation of life. Thus, a total amount of compensation was worked out to be Rs. 51,000. In that case Asha Rani, aged about 30 years, had died in the accident. Claimant Parhalad Chand is the husband of deceased Asha Rani whereas other claimants are her minor children. It was stated by claimant Parhalad Chand in his statement that the deceased was knowing tailoring work and was earning Rs. 4,000 to Rs. 5,000 per annum by doing tailoring work at home and was earning as such by stitching the clothes of others. Besides, she was doing entire domestic work and also teaching the minor children at home. We find that no such statements were made by the claimants in the petition that the deceased was doing the tailoring work and was earning Rs. 4,000 to Rs. 5,000 per year on that score. The learned Tribunal concluded that the deceased was not earning anything by doing the tailoring work from the outsiders. This reasoning of the Tribunal appears to be correct and proper. There is no pleading nor evidence produced on record to prove that the deceased was earning her income from any source. The learned Tribunal recorded a finding that the deceased was doing the entire domestic work in the house, besides some tailoring work and she was also teaching her children at home. The learned Tribunal assessed the monthly pecuniary loss suffered by the dependants at the rate of Rs. 200 on the basis that a domestic servant at the disposal of his master for 24 hours a day would have cost not less than Rs. 200 per month apart from meals and clothings, etc. In addition to this, the learned Tribunal observed that a school master engaged as tutor for teaching the children would cost not less than Rs. 100 per month. Having regard to all the facts and circumstances of the case a sum of Rs. 200 per month was assessed as monthly pecuniary loss suffered by the claimants due to the death of Asha Rani. The Tribunal selected the multiplier of 20 and assessed the amount of compensation at Rs. 48,000 for the total loss suffered by the claimants due to the death of Asha Rani and further Rs. 3,000 were added as conventional damages with interest at the rate of 12 per cent from the date of institution of the petition till realization thereof.

(19) The appellant vehemently attacks the method adopted by the Tribunal in arriving at a total compensation of Rs. 51,000. According to the appellant the multiplier chosen by the Tribunal is not based upon any principle. It is also the

contention of the appellant that a sum of Rs. 200 assessed as monthly pecuniary loss suffered by the claimants due to death of Asha Rani is not based on evidence and has been awarded on conjectures and surmises by the Tribunal. We find that the method adopted by the learned Tribunal is not proper and legal and is based on no evidence on record. There is not an iota of evidence adduced on record to prove that after the death of Asha Rani, claimants had engaged a servant for doing the domestic work and a teacher for teaching the children. In the absence of positive evidence the criterion was adopted by the learned Tribunal on mere conjectures and surmises. The loss of the wife of Parhalad Chand and mother of the minor children is irreparable and it is not possible to calculate the loss in terms of money. The claimants have also suffered loss of companionship, love and affection besides they are put to a great mental agony. The family has become rudderless with young minor children. In the facts and circumstances of the present case the compensation can be awarded on the footing that the claimants have suffered loss of consortium. It is only in certain kinds of damages the pecuniary value can be ascertained. The other damages have to be brought under the heading non-pecuniary damages and the court has to award just compensation having regard to the facts and circumstances of each case. In *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, it was observed as under (para 9):

Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas the non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

(20) In para 12 it was further held that in its very nature whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guess-work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

4. In this case it is stated that the deceased was a co-owner of an orchard and the income therefrom was about Rs. 20,000 per annum. It cannot be said that

the family has lost that income on account of the death of the deceased as the legal representatives of the deceased would certainly be inheriting the share of the deceased which she had in the orchard and that income would be intact in the hands of the claimants.

5. As regards the claim of contribution of any other amount by the deceased to the family there is no evidence that she was working anywhere and earning any salary. On the other hand, what is attempted before the Tribunal is to evaluate her domestic services and agricultural work said to have been done by the deceased. In such a situation, we are unable to accept the method of calculation adopted by the Tribunal but taking into account the loss of consortium suffered by the claimant No. 1 who is the husband and claimant Nos. 2 to 7 who are the children, mental agony and pain suffered by them, we fix the total compensation payable to the claimants at Rs. 1,00,000 inclusive of a sum of Rs. 3,000 for funeral expenses.

6. The award of the Tribunal is modified by reducing the amount of compensation to Rs. 1,00,000. This will be inclusive of Rs. 15,000 said to have been paid under the "no fault" clause.

7. The amount is apportioned in the following manner:

The claimant No. 1, husband of the deceased, will get Rs. 10,000 and the remaining claimants being the children of the deceased will each get Rs. 15,000.

8. The amount will bear interest at the rate of 12 per cent per annum from the date of institution, namely, 17;5.1988 up to the date of deposit. The Tribunal will work out the amount actually due inclusive of interest to the claimants and if any amount is to be refunded by the claimants it is open to the State Government to take appropriate proceedings for restitution. If any amount in deposit is liable to be refunded to the Government, the Tribunal will release the same in favour of the appellant. The appeal is allowed accordingly. No costs. The interim order is vacated.