

(2001) 08 KAR CK 0029

In the Karnataka High Court

Case No : Regular First Appeal No. 463 of 1992

State of Karnataka and Others

APPELLANT

Vs

Lalita and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Fatal Accidents Act, 1855 — Section 1 A
Motor Vehicles Act, 1988 — Section 110 B

Citation : (2003) ACJ 228 : AIR 2001 Kar 485 : (2001) ILR (Kar) 4226 : (2001) 6 KarLJ 441 : (2002) 1 KCCR 22 SN

Hon'ble Judges : V.G. Sabhahit, J;P. Vishwanatha Shetty, J

Bench : Division Bench

Advocate : Ashok Menasinakai, for the Appellant; G.S. Vishweshwara, C.M. Desai and Somanath Reddy, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by defendants 1 to 3 in O.S. No. 43 of 1988 on the file of Civil Judge at Yadgir is directed against the judgment and decree dated 30-7-1992 awarding compensation of Rs. 6,69,000/- as compensation to the respondents 1 to 3 herein.

2. The facts of the case in brief leading up to this appeal are as follows. The parties would be referred to with reference to their rank in the Trial Court.

The plaintiffs 1 to 3 filed O.S. No. 43 of 1988 on the file of the Civil Judge, Yadgir, u/s 1A of the Fatal Accidents Act seeking compensation of Rs. 8,33,228.50 Ps. from the defendants. It is averred in the plaint that Narasappa, son of Bheemappa was working as Accounts Superintendent in the Office of the Executive Engineer, S.D.C. Distributary Division, No. 8, Krishnapur on a pay scale of Rs. 1600-40-1800-50-2300-1900-90-2990. In addition to basic pay he was getting Project allowance of Rs. 75/- and D.A. of Rs. 76/- and thus in 1987 he was getting salary of Rs. 2,051/- p.m. comprising of Rs. 1,900/- basic pay and above said allowances of Rs. 75/- and 76/- respectively. Narasappa was allotted

residential quarter No. D-5672 U.K.P. Camp and he was residing in the said quarters along with his wife and children, the plaintiffs. Residential quarters No. D-6871 is situated near the residential quarters occupied by Narasappa bearing No. D-5672. Three rooms in quarter No. D-68/1 were and are used as storeroom and defendant 5-storekeeper was in charge of the said storeroom. Remaining three rooms in quarter No. D-6871 was in occupation of Sangappa who was working on daily wages. It is further averred that it was learnt that in the storeroom in residential quarter No. D-6871, explosive materials were stored illegally, unauthorisedly and negligently. No danger mark has been affixed. The said storeroom was never meant for storing explosives like Gelatine and detonates. In view of the said negligent and illegal act of defendant 5 in storing explosives in residential quarters on 11-5-1987 at about 9-30 a.m. while Narasappa was passing on the road near the said quarter No. D-68/1, a big explosion took place in the storeroom. Due to explosion pieces of windows, doors, roof flew here and there and said materials hit Narasappa and Narasappa succumbed to the injuries and died at the spot. The plaintiffs who are wife and minor children of deceased filed a suit averring that Narasappa was aged 39 years at the time of his death in fatal accident which occurred due to the gross negligence and illegal act of defendants 4 and 5 and hence defendants 1 to 3 are also vicariously liable to pay compensation of Rs. 8,33,228.50 Ps. to the plaintiffs. It is averred that Narasappa was aged 39 years. He was expected to reach the post of Deputy Controller of Accounts in the pay scale of 3170-90-33-50-100-39-50-120-4430 and would have earned more than Rs. 15 lakhs till his retirement. He was expected to survive for more than 65 years of his age. He was the sole earning member in the family and plaintiffs and another son Ravi who died on 23-6-1987 were dependent upon his income. Plaintiff 1 is deprived of conjugal rights and plaintiffs 2 and 3 have lost love and affection of their father. Wherefore, they claimed compensation of Rs. 8,33,228.50 Ps. comprising of Rs. 7,33,228.50 Ps. toward loss of expectation of life of Narasappa and Rs. 1,00,000/- towards loss of conjugal life.

3. The suit was resisted by the defendants. Defendant 2 filed written statement which was adopted by defendants 1 and 3. Defendant 2 admitted that Narasappa who was working as Accounts Superintendent was allotted quarter Nos. D-56/2 and D-68/1 was used as store which was in charge of defendant 5. It is averred that said quarter No. D-68/1 is at a distance of 700" to 800" from the quarter of Narasappa and only T and P scrap materials were expected to be stored in the said quarter and not blasting materials. Defendant 2 was not aware of the fact of storing blasting material in the said quarter No. D-68/1. Averment that Narasappa died due to multiple injuries in the blast was denied. It was also averred that quantum of compensation claimed is exaggerated and Court fee paid is not sufficient and wherefore suit is liable to be dismissed.

4. Defendant 4 filed written statement denying the averment that quarter No. D-68/1 was unauthorisedly used as store. He averred that control, possession and storing of the explosive material is with the Executive Engineer and

explosives were indented and supplied under counter-signature of Executive Engineer and suit filed without impleading him is not maintainable and defendant 4 is not liable for payment of any compensation.

5. Defendant 5 filed written statement denying the averments made in the plaint regarding age and income of Narasappa and that his death due to explosion caused by materials stored in quarter No. D-68/1 and he made similar averments as made by defendant 4 that he is only subordinate to Executive Engineer who is in charge of control, possession and storage of explosives and he is not liable to pay any compensation.

6. Having regard to the above pleadings the Trial Court framed the following 9 issues:

1. Whether the plaintiffs prove that late Narasappa was getting Rs. 2,091/- as salary?
2. Whether the plaintiffs further prove that the blasting materials were stored in quarter No. D-68/1?
3. Whether the plaintiffs further prove that Narasappa died on account of the alleged explosion and due to negligent act of the defendant?
4. Are plaintiffs entitled for compensation?
5. Is Court fee paid is sufficient?
6. Whether the suit is bad for non-joinder of necessary party?
7. Whether the defendants prove that the suit of the plaintiff is not maintainable?
8. Is plaintiffs entitled for the relief sought for?
9. What order or decree?

7. The first plaintiff was examined as P.W. 1 and she got marked the documents Exs. P. 1 to P. 16. On behalf of the defendants the Assistant Executive Engineer was examined as D.W. 1, However, no document was produced on behalf of the defendants.

8. The learned Civil Judge after considering the oral and documentary evidence on record by his judgment dated 30-7-1992 answered Issues 1 to 5 and 8 in the affirmative, Issues 6 and 7 in the negative and Issue 9 as per final order and accordingly decreed the suit of the plaintiffs for Rs. 6,69,000/- as against defendants 1 to 3. Being aggrieved by the said judgment and decree of the Trial Court defendants 1 to 3 have preferred this appeal.

9. We have heard the learned High Court Government Advocate for appellants and the learned Counsels appearing for the respondents.

10. We have gone through the oral and documentary evidence adduced by the parties before the Trial Court.

11. In view of the facts elicited in the cross-examination of D.W. 1 that explosive materials were there in quarter No. D-68/1 it is clear that though it was only residential quarters a portion of it was used as storeroom for storing scrap materials, explosives were not expected to be stored there. As averred in the written statement of defendant 2 it is clearly established that explosive materials were stored illegally and negligently in quarter No. D-68/1. Ex. P. 15-Circular issued by Superintending Engineer reads as follows:

"An explosion occurred in the colony on 11-5-1987 at about 9-30 p.m. in House No. D-68/1 resulting in the death of Shri Narasappa, Accounts Superintendent".

The circular also shows that storing of blasting material in the residential area is prohibited. It is also further clear that defendants 1 to 3 would be vicariously liable for the acts of defendants 4 and 5 who are their employees. Wherefore, the said finding that plaintiffs are entitled to damages from defendants 1 to 3 is unassailable and the contention urged by the learned High Court Government Advocate is that the quantum of compensation is excessive and the same is liable to be reduced and wherefore the point that arises for determination in this appeal is:

Whether the quantum of compensation awarded by the Trial Court is excessive? And if so whether it is liable to be reduced?

We answer the above point by holding that the quantum of compensation awarded by the Trial Court is not excessive and does not call for reduction in this appeal for the following:

REASONS

12. The method of assessment of compensation in a suit filed under the Fatal Accidents Act is not the same as the computation of compensation in claim petitions arising under the Motor Vehicles Act and the contents of provisions of the section in these two Acts is not the same. The Supreme Court while analysing the difference in the provisions of the Act in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, has observed in paragraph 26 (3201) as follows:

"26. We have already referred to above the Section 1A of the Fatal Accidents Act, 1855 and Section 110-B of the Motor Vehicles Act, 1939 under which compensation is payable to the claimant. Section 1 of 1855 Act was renumbered as Section 1A through the amending Act 3 of 1951. We find that the language of Section 110-B of the 1939 Enactment is different than what is u/s 1A of the 1855 Act. Section 1A of 1855 Act provides that whenever death occurs on account of wrongful act or neglect, entitles the party injured to maintain a suit to recover damages from the party, who caused the injury or the death. This entitles the party to recover damages, whenever death is occasioned by the wrongful act, negligence or default, which would have entitled to party injured (if death had not resulted) to maintain an action to recover damages in respect thereof. This

provision was interpreted within the limitation of the words used therein and in the absence of any guiding words therein. The Courts rightly drew the general principle of common law of loss and gain. But Section 110-B of 1939 Act empowers the Tribunal to determine the compensation which appears to it to be just. The words used in Section 110-B are "which appears to it to be just". Use of these words, widen the scope of determination of compensation which is neither under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846".

The Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , while considering the computation of damages under the Fatal Accidents Act referred to the General Principle of Common Law of Loss and Gain as enunciated in the English decisions since provisions of Fatal Accidents Act in India is similar to Section 9 of the English Fatal Accidents Act, 1846. The Supreme Court referred to two English decisions where General Rule under Common Law of Loss and Gain theory was enunciated. One of them was the case of *Davies v. Powell Duffryn Associated Collieries Limited*, wherein it was laid down as follows:

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

Lord Wright elaborated the theme further thus at page 611:

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered.....The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death".

24. The second decision was of Viscount Simon in *Nance v. British Columbia Electric Railway Company Limited*. Here the Lords were considering the analogous provisions of the British Columbia legislation. Viscount Simon laid down the mode of estimate of the damages. This authority spelt out the method of calculating damages and thus held:

".....It would be seen from the said mode of estimation that many imponderable enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, 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 dependent by the death must be ascertained".

13. The Trial Court has rightly applied the principle of common law of loss and gain. It has rightly proceeded to ascertain the pecuniary loss suffered by the claimants due to the death of Narasappa. Narasappa was born on 8-10-1947 and he suffered death in a fatal accident due to the negligence of defendants on 11-5-1987. Wherefore, he was aged about 40 years on the date of accident. Having regard to the life expectation prevalent, age of longevity, the age of 65 years taken as the age up to which Narasappa would have lived is reasonable.

14. Narasappa would have attained age of superannuation, 58 years, in October 2005 as he had still 18 years of service and till then he would have drawn salary and thereafter for 7 years he would have received pension. Ex. P. 13 shows that Narasappa while in service was drawing the salary as under in the scale of Rs. 1600-40-1800-60-2300-75-2900-90-2990.

Pay Rs. 1,900.00 p.m. D.A. Rs. 76.00 p.m. Total Rs. 1,976.00 p.m.

The pecuniary loss suffered by the claimants would be the amount which he would have contributed to the family which has been rightly taken as 2/3rd of his income after deducting 1/3rd towards personal expenses. The salary of Rs. 1,976/- per month as on May 1987 would not remain the same throughout his career till retirement. He would have earned increments as per pay scale and though P.W. 1 states that her husband would have earned Rs. 15 lakhs in his service as salary, D.W. 1 has stated that he does not know whether Narasappa could have earned Rs. 15 lakhs had he alive. However, the said contention that Narasappa would have earned salary of Rs. 15 lakhs till his retirement is not substantiated and detailed statement of salary showing the total amount of salary which Narasappa would have drawn having regard to increments and rise in dearness allowance has been filed which shows that Narasappa would have drawn salary of Rs. 10,35,715.00 between June 1987 to October 2005. The said statement is based upon increment and rise in D.A. during the tenure of office if he was alive and said Statement does not take into account prospects of promotion, revision of pay scale etc., and wherefore acceptance of said amount of Rs. 10,35,715.00 towards salary cannot at all be said to be excessive. Out of this amount 1/3rd of the same Rs. 3,45,238/- is deducted towards personal expenses and balance of 2/3rd amount which Narasappa would have contributed to family is rightly treated as pecuniary loss amounting to Rs. 6,90,476/-. The further pecuniary loss suffered by the plaintiffs would be amount of contribution which Narasappa would have made towards plaintiff out of pension received by him after superannuation and till he attained the age of 65 years and pension would have been 50% of last pay drawn plus D.A. which has been rightly taken as Re. 2,995/- taken by the Trial Court. Out of this pension Narasappa would spend 1/3rd towards his personal expenses and spend balance of Rs. 1,996/- p.m. for 7 years towards family expenses of the plaintiffs and wherefore the said

pecuniary loss would come to Rs. 1,996 x 12 = Rs. 23,952 x 7 = Rs. 1,67,664/-. Wherefore pecuniary loss suffered by plaintiffs has been arrived at Rs. 8,51,140/-. Out of this amount the learned Civil Judge has deducted following pecuniary benefits received by plaintiffs due to death of Narasappa as available on record:

(1) Rs. 1,71,000/- towards family pension received by first plaintiff. In fact this deduction is on a higher side as Civil Judge has taken pension of Rs. 570/- per month for 25 years whereas pension would have reduced to Rs. 285/- from 11-5-1994 in which case deduction would have been less than Rs. 1,71,000/-. Wherefore the deduction cannot at all be said to be on a lower side.

(2) The D.C.R.G. amount of Rs. 29,500/-.

(3) Family Benefit Fund amount Rs. 40,000/-.

15. There is no material on record to show that plaintiffs have received any other benefits and wherefore applying the principle of loss and gain the learned Trial Court has arrived at compensation of Rs. 6,69,000/-. We do not find any error committed by the learned Trial Court while so determining the compensation. We are satisfied on the basis of the material on record and the application of correct principle of law. The quantum of compensation awarded is not excessive. In our view it is a conservative assessment as prospects of promotion, reduction of family pension after 1994 has not been taken into account and wherefore we do not find any ground to reduce the quantum of compensation awarded by the Trial Court and accordingly we hold that there is no merit in this appeal and pass the following order:

16. The appeal is dismissed. Parties to bear their own cost in this appeal.