
(1982) 12 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 35 of 1975

State of Maharashtra

APPELLANT

Vs

Satpal Kaur Niranjn Singh (Smt.) and Others

RESPONDENT

Date of Decision : 02-12-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : (1983) 1 BomCR 546

Hon'ble Judges : Sharad Manohar, J;S.C. Pratap, J

Bench : Division Bench

Advocate : M.R. Kotwal, G.P, for the Appellant; P.L. Nain, for the Respondent

Judgement

Sharad Manohar, J.—This appeal is filed by the State of Maharashtra against an award of the Motor Accident Claims Tribunal granting Rs. 2,00,000/- as compensation to the widow and children of deceased Niranjn Singh Bhola Singh, who died in an accident caused by virtue of the negligence of the driver of a milk van belonging to the State Government. After hearing Mr. Kotwal, the Government Pleader, at length we are satisfied that if at all there is any error committed by the Tribunal, it is in favour of the Government and not in favour of the claimants at all.

2. The facts of the case, which are no longer in dispute, are as follows :

Deceased Niranjn Singh was born on 10th September, 1937. On the date of the accident which took place on 7th June, 1972 at about 10.00 a.m. he was 34 years, 8 months and 27 days in age. He was working with Prestolite of India Limited as a Liaison Officer since 14th September, 1964 and on the date of the accident he was drawing a salary of Rs. 950/- p.m. However, his pay packet contained Rs. 1,350/- because he got conveyance allowance of Rs. 150/- p.m. entertainment allowance of Rs. 50/- p.m. and special allowance of Rs. 200/- p.m. On the date of the accident, 7th June, 1972 he was going on his scooter and near Smashan Tekadi, Western Express Highway, Jogeshwari, he had stopped

was somewhat out of order. He took the scooter to the extreme left side of the road and was bending the doing some repairing work. It is nobody's case that he was obstructing the traffic in the least possible way. While he was repairing the scooter at the extreme left side of the road, a milk van belonging to the Government came from south to north. Evidently, it was in great speed. There was no reason why the milk van should have knocked down the deceased. But that it what the van did The only inference that could be drawn is that the driver was driving the vehicle recklessly and in a rash and negligent manner. This fact is no longer in dispute and hence the same may be taken as proved. The collision was of such a grievous nature that Niranjana's skull was broken. He bled profusely from the mouth as also from other parts of his body and died instantaneously. The driver of the vehicle no doubt stopped the vehicle at some distance from the place of the accident, but he did not report the accident to the police and in fact wanted to run away after the accident. Fortunately, however, he was caught hold of by one of the eye witness as also by some other members of the public.

It was in these circumstances that the widow and the children of deceased Niranjana filed an application before the Motor Accident Claims Tribunal or Greater Bombay for claiming damages for the estate of the deceased. The damages claimed were in the sum of Rs. 3,00,000/-.

3. There is no dispute that the deceased left his widow, who was 27 years of age on the date of the accident, and three children, Arvinder Kaur daughter, of the age of 9 years, Gurminder Singh son of the age of 7 years the Bobby-Son of the age of 1 year only.

4. In the application, driver Ramlakhan Darshan was respondent No. 1 and the State Maharashtra who was the owner of the vehicle was respondent No. 2. A common written statement was filed on behalf of both of them. In the written statement, the fact that the milk van dashed against deceased Niranjana was not only not disputed but was specifically averred. All the same, however, it was denied that there was any negligence on the part of the driver. It is really difficult to see as to how negligence on the part of the driver could be denied if the facts that the deceased was repairing his scooter at the extreme left side of the road and was still dashed against by the van were not disputed at all. In the written statement, there was no allegation about any kind of contributory negligence on the part of the deceased at all. Fact, however, remains that inspite of this position, there was averment made denying the fact that the driver was driving the vehicle negligently and in a rash manner.

The main contest was, however, as regards the quantum of compensation that should be paid to the claimants. Contention was that the claim was an exaggerated claim and on that ground, it was prayed that the application for compensation be dismissed with costs.

5. Since the very fact that the driver was driving rashly and in a negligent

manner was denied, evidence had to be led by the claimants for proving the tortious liability of the driver, respondent No. 1. Elaborate evidence was led on behalf of the claimants on that point and after examining the evidence, the Tribunal held that the fact that the driver, respondent No. 1, was driving the vehicle rashly and in a negligent manner and that the accident was the direct result of such rash and negligent driving were sufficiently established.

6. On the question of quantum of compensation that should be paid to the claimants, the Court held that the life expectancy of the deceased should be 70 years. However, the Tribunal held that it would be safe to hold that the earning capacity of the deceased would be till the age of 60 years. Since the deceased was of the age of 34 years and 8 months on the date of the accident, the Tribunal computed the benefit for the estate to be extended till 25 years only. The Tribunal found that since the deceased was earning Rs. 1350/- per month, the dependency of the estate would be of Rs. 1000/- per month. Multiplying the said figure by 12 for the purpose of arriving at the figure of yearly dependency and multiplying the said figure by 25, the Tribunal found that the benefit of the estate over the period of 25 years would be to the tune of Rs. 3,00,000/-. Adding to the said figure the amount of Rs. 5000/- by way of loss of consortium to the wife and Rs. 5000/- to the remaining claimants, the children, the Tribunal found the dependency to be of Rs. 3,10,000/-. However the Tribunal further took the view that this amount of Rs. 3,10,000/- was being received by the claimants in one lump sum and the interest on the same would be more than Rs. 1000/- or to the tune of Rs. 1000/- while the capital would remain intact, which would not be the position even if the deceased had not died and had gone earning the amount till the age of 60. From the sum of Rs. 3,10,000/- therefore, a sum of Rs. 1,10,000/- was deducted by the Tribunal and the Tribunal held that an amount of Rs. 2,00,000/- should be awarded to the estate of the deceased represented by the four claimants. The Tribunal also passed the consequential order relating to apportionment of the said amount of Rs. 2,00,000/- awarded to the claimants. It is against the said award that the appeal is filed by the State of Maharashtra.

7. It may be stated at the outset that the claim in this appeal is restricted by the appellant only to a sum of Rs. 1,00,000/- and the remaining balance of Rs. 1,00,000/- had been in fact deposited by the appellant/State in the Tribunal with a view to obtain an order of stay of the execution of the award from this Court. Unfortunately, it turns out that the fixed deposit is not subsequently renewed by the appellant/State and no effort was made on behalf of the appellant/State to safeguard and interest of the respondent in this behalf. We shall have to pass a suitable order in order to protect the respondent from the loss that is likely to be caused to the respondent in this connection.

8. Mr. Kotwal, the learned Government Pleader appearing for the appellant stated at the outset that it was not open for him to question the correctness of the finding relating to the factum of the appellant's liability. He fairly stated to the Court that since the award of compensation to the tune of Rs. 1,00,000/- was

acquiesced in by the appellant, it was not open for the appellant state to contend that the finding relating to rash and negligent driving by the driver-respondent No. 1 was an incorrect finding. He proceeded with his argument on the basis that so far as the factum of liability was concerned, he could not dispute the correctness of the tribunal's finding in that behalf.

9. As regards the quantum of the liability however, Mr. Kotwal strenuously contended that the Tribunal was not right in arriving at the conclusion that Rs. 3,10,000/- was the value of the dependency over a period of 25 years. According to him, the other members of the family of the deceased, namely, the claimants, would have been receiving not more than Rs. 850/- per month out of the total earnings of the deceased. Calculating the said income over a period of 25 years as was done by the Tribunal, Rs. 2,65,000/-. He did not disputed that Rs. 10,000/- should be paid to the wife and children by way of loss of consortium. Taking the figures of compensation to be Rs. 2,65,300/-, he contended that since this entire amount was being received by the claimants in a lump sum the claimants would be getting Rs. 1000/- per month for all times in future while the capital of Rs. 2,65,000/- would be intact. From the sum of Rs. 2,65,000/-, therefore, he suggested that 1/3rd amount should be deducted and the balance should be held payable to the estate of the deceased.

10. We do not find any justification for such argument and reasoning. As stated at the outset, in the first place, we are not at all satisfied with the Tribunal's view that the dependency would be for a period of 25 years. The Tribunal has itself relied upon the judgment of the High Court of Punjab and Harayana in the case of Surjit Kaur v. Gurmail Singh and another 1974 A.C.J.P. 135 where it was held that the life expectancy of the person in India can be safely taken to be 70 years. We do not see any reason as to why it should be held that the deceased could not have gone on earning income, either from service in the present company or with some other employers, till the age of 65. It is even possible that after the retirement, he could resort to other sources of income such as business or other remunerative activity. Even taking the dependency of the estate to the tune of Rs. 850/- per month, therefore, the total benefit to the family would be, over the period of 30 years, in the sum of Rs. 3,06,000/-. Adding to the same, the amount receivable on account of loss of consortium, Rs. 10,000 for the wife and children, the total amount receivable by the estate would be Rs. 3,16,000/-. Even deducting 30% from the same, the amount receivable by the estate comes to a little more than Rs. 2,10,000/-. The Tribunal has awarded Rs. 2,00,000/- only. This is the reason why we feel that if at all there is any error in the reasoning and calculation of the Tribunal, it is an error on the safer side and an error in favour of the appellant-State, not an error in favour of the claimants state.

11. But we are not satisfied even of the position that Rs. 850/- per month should be the only basis of computation. Rs. 850/- could be said to be the dependency on the date of the accident. It can hardly be denied that the deceased would be

getting higher remuneration in the course of time. What we have done is that we have taken the minimum benefit that would be available to the estate, not the average benefit. If the average benefit was to be taken, the legitimate figure could even be Rs. 1500/- per month and in that case, the benefit to the estate stretching over a period of 30 years would be nearly double the figure we have already mentioned. Whichever way we look at it, we cannot escape the conclusion that the amount of compensation awarded by the Tribunal cannot be said to be an exaggerated amount.

12. Our attention was invited to the judgment of another Division Bench of this Court reported in Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, to which my learned brother was also a party. In the said judgment, this Court has held that 65 years could be safely considered to be the age limit to which a person of normal health could be said to be having income-making capability. The learned Judge has taken the income making range of life to be 60 years, but he has computed the monthly dependency at the rate of Rs. 1000/-. We do not find any fault with the latter finding. We do not think that the figures of Rs. 850/- suggested by the Government Pleader as the dependency per month is the correct figure. We have already mentioned above that the average figure could be raised to Rs. 1500/- per month. The Tribunal has taken it at the rate of Rs. 1000/- per month. We do not think that the findings involve any mistake against the present appellant at all.

13. Having regard to all these circumstances we are of the opinion that there is no substance in the present appeal and the same needs be dismissed with costs.

Mr. Kotwal faintly argued that from out of the amount of Rs. 2,00,000/-, the amount received by claimant No. 1 from the Insurance Company on the insurance policy taken by the deceased should have been deducted. However, he himself fairly conceded that this question is no longer *res integra* by virtue of a judgment of a Full Bench of this Court reported in *M/s. Hirjee Veerji and Co. v. Smt. Saroja Narayan Shetty and others* AIR 1982 Bom. 467, where it is held that entire amount of the policy received by the estate cannot be deducted, but only the acceleration can be taken into consideration. In the instant case, there is no evidence led whatsoever as to what was the nature of the policy taken by the deceased as to when the policy was to become mature and as to what was the amount of acceleration. As pointed by Mr. Nain, a question was asked in the cross examination as to whether she had received any monies from the Insurance Company, and she stated that she received Rs. 20,000/- from the Insurance Company. From this evidence, it cannot be said to be proved that the payment under the insurance policy was accelerated.

In this view of the matter, Mr. Kotwal's contention that a part of Rs. 20,000/- should be deducted cannot be accepted. Even if a portion of the amount of Rs. 20,000/- could be deducted still the fact remains that the claimants were entitled to a large amount than Rs. 2,00,000/- awarded by the Tribunal. The point relating to the insurance policy raised by Mr. Kotwal is, therefore, without any

substance so far as the present appeal is concerned.

14. We, therefore, dismiss the present appeal with costs. However, in view of the fact that a sum of Rs. 1,00,000/- was deposited by the appellant. State in the Tribunal with a direction to invest the same for one year in fixed deposit and in view of the further fact that no arrangement was made for the further renewal of the fixed deposit and since loss is caused to the claimant by way of interest for the further period from the date when the fixed deposit became mature, we make it clear that the appellant shall pay to the respondent a sum of Rs. 2,00,000/- with interest as directed by the Tribunal from the date of the application till the date of payment. We, however make it clear that if by virtue of the investment of the amount of Rs. 1,00,000/- in fixed deposit as per the direction of this Court, some larger amount is found receivable by the claimants by way of interest, the claimants will have the right to receive the same.