

**(1983) 06 CAL CK 0034**  
**In the Calcutta High Court**  
**Case No : A.F.O.O. No. 577 of 1976**

State of West Bengal

APPELLANT

Vs

Statish Sharma and Another

RESPONDENT

**Date of Decision :** 08-06-1983

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 110A, 110A(1), 110D

**Citation :** (1985) ACJ 271

**Hon'ble Judges :** Sachindra Nath Sanyal, J;Anil Kumar Sen, J

**Bench :** Division Bench

**Advocate :** A.N. Banerjee and Tapan Kumar Sen Gupta, for the Appellant;N.K. Chaturbedi, H.K. Chaturbedi and Sambhu Nath Roy, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Anil Kumar Sen, J.—This is an appeal by the State of West Bengal u/s 110-D of the Motor Vehicles Act.

2. The subject matter of challenge is an award made by the Motor Accidents Claims Tribunal for Calcutta and 24 Parganas (the 13th Additional District Judge, Alipore) dated August 5, 1975.

3. One Capt. V.K. Sharma died as a result of a road accident on April 11, 1970, when while he was proceeding on his scooter from south to north along Belvedere Road his scooter was hit by a prison van belonging to the Appellant bearing No. WBC 9320. In lodging the claim u/s 110-A(1)(b) of the Motor Vehicles Act the claimants, namely the widow and the minor daughter of the deceased, made out a case that the driver of the prison van was driving the said van in a rash and negligent manner, took a vicious wide left turn at speed without any horn and knocked down the deceased who was on the extreme western side of the Belvedere Road. The scooter was totally wrecked and the deceased was thrown into a nearby ditch wherefrom he being removed to the S.S.K.M. Hospital, died of his injuries shortly after he was admitted to the

hospital.

In the application for compensation the claimants preferred a claim to the tune of Rs. 2,50,000/- by way of compensation. According to the claimants, the deceased was aged about 30 years at the time of his death and being employed with IMC-Vogal Industries was earning an income of Rs. 1,000/- per month.

4. The claim was contested on behalf of the Appellant State of West Bengal and an objection was filed. According to the State of West Bengal, the accident was not due to any rash and negligent act on the part of the driver of the prison van but it was due to failure of the brake. The amount of the compensation claimed was also contested.

5. At the trial the claimants alone adduced evidence, both oral and documentary. An eye-witness to the accident was examined as PW 2. According to the evidence of this witness, the deceased was proceeding towards north along the west of Belvedere Road. The van driver did not blow any horn nor did raise any alarm. The van crashed on the scooter on the western footpath and the deceased was badly injured when thrown inside a drain. According to this witness, at the material time the van driver was driving the vehicle at high speed. The claimant in her evidence proved the age of the deceased as also his income. According to her evidence, the deceased out of his income used to give her a sum of Rs. 800/- per month after deduction. Exh. 2 was the university certificate produced to prove the age of the deceased and Exh. 1 was a letter of the employer to show that the salary of the deceased was increased to a sum of Rs. 1,000/- with effect from April 1, 1970. As we have indicated hereinbefore the State of West Bengal adduced no evidence either to controvert the evidence thus adduced by the claimants or to prove its own defence.

6. The Tribunal on consideration of the evidence thus adduced recorded a finding that the deceased died as a result of an accident which was caused by the rash and negligent driving of the prison van belonging to the Appellant. This part of the finding is well supported by the evidence adduced to which we have already made a reference. Mr. Banerjee appearing in support of this appeal in his usual fairness has not challenged this part of the finding of the Tribunal.

7. The Tribunal having found that the deceased died as a result of the rash and negligent driving of the driver of the prison van held that the claimants are entitled to compensation u/s 110-A of the Motor Vehicles Act. The Tribunal then proceeded to assess the compensation. In assessing the compensation the Tribunal found that the deceased died at a very tender age when he was even below 30 years of age on the date of his death. The Tribunal accepted the evidence adduced on behalf of the claimants to show that the deceased was drawing a salary of Rs. 1,000/- per month at the time of his death. The Tribunal, accordingly, assessed the annual income at Rs. 12,000/- and multiplied the said sum by 15 obviously taking the life expectancy as also the expectancy of earning capacity of the deceased for the next 15 years. On that assessment he arrived at

the figure of Rs. 1,80,000/- and deducted therefrom one third thereof which would have been spent for his own maintenance. Thus he arrived at the figure of Rs. 1,20,000/- as the pecuniary loss likely to have been suffered by the claimants on the death of the deceased and added thereto a sum of Rs. 10,000/- by way of loss of consortium. He thus assessed and made an award of compensation for Rs. 1,30,000/- and directed that the said amount be paid by October 1, 1975 together with cost of a sum of Rs. 75/- failing therein the award amount would carry interest at six per cent.

8. In this appeal Mr. Banerjee wanted to raise two points, namely one of limitation and the other with reference to the assessment of compensation. The point as to limitation was not pressed by Mr. Banerjee when it was found that the period of limitation expired during the Puja Holidays and the application was filed on the reopening date. So far as the assessment of compensation is concerned, according to Mr. Banerjee, the claimants had failed to establish beyond doubt that the deceased was earning a sum of Rs. 1,000/- a month. According to Mr. Banerjee, the claimant herself was not competent enough to give evidence as to what was the salary of her husband. So far as the letter, Exh. 1 is concerned, according to Mr. Banerjee, the Managing Director not having been examined no reliance can be placed on the same. Further it has been contended by Mr. Banerjee that the learned Judge failed to take notice of the fact that even assuming Rs. 1,000/- to be the monthly salary of the deceased that being subject to income tax the entire amount could not have been taken as the basis for calculating the compensation.

9. We have carefully considered the objections thus raised by Mr. Banerjee, but we are unable to sustain the same. In our considered opinion, the assessment of compensation is more in favour of the State than in favour of the claimants. We have indicated hereinbefore that the deceased died at the age of 30 years and his life expectancy was taken to be only 15 years in making the compensation. In our view, this was very modest assessment and accordingly in favour of the State and not in favour of the claimants. We are unable to accept the contention of Mr. Banerjee that the claimant was not competent to lead evidence as to the income of her husband. Moreover, Exh. 1 has been duly proved when one of the assistants of the employer had been examined to prove the document. There is no reason why we should not accept the letter as satisfactory evidence to indicate that the salary offered to the deceased by the employer at the time of his death was Rs. 1,000/- a month. It is no doubt true that there is no evidence to indicate that any amount of income tax used to be deducted from that salary, but the fact remains that the assessment was made in a very modest manner as we have indicated hereinbefore and we do not consider it to be just and proper to reopen the assessment for the purpose of determining what amount of income tax was being deducted from that sum of Rs. 1,000/- . There is a cross-objection and though there are some merits in the cross-objection filed on behalf of the claimants that had not been pressed for the simple reason that may entail a further delay if the assessment is to be reopened and the compensation be

directed to be re-assessed with reference to the further evidence on the point. The delay in that event would be highly prejudicial to the claimants when we are told that the widow is suffering from a fatal illness. In these circumstances, we affirm the award made by the Tribunal and dismiss this appeal. The cross-objection is dismissed as not pressed.

10. We, however, make no order as to costs.

11. Since Rs. 50,000/- had already been deposited by the State of West Bengal we now direct the State of West Bengal to deposit the balance together with interest as awarded by the Tribunal below within a period of sixty days from this date in the Tribunal below. As and when the amount is so deposited the claimants-awardees would be entitled to withdraw the same without furnishing any security. The claimants having withdrawn a sum of Rs. 50,000/- already deposited on furnishing security, we now release the claimants from security furnished.

12. Let the records be sent down. No formal decree need be drawn up.

S.N. Sanyal, J.

13. I agree.