
(1986) 07 MP CK 0058
In the Madhya Pradesh High Court

Tarabai

APPELLANT

Vs

M.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 11-07-1986

Acts Referred:

Citation : (1987) 1 ACC 55 : (2004) ILR (MP) 1161

Hon'ble Judges : P.C. Pathak, J

Bench : Single Bench

Judgement

P.C. Pathak, J.—The order in this appeal shall also govern the disposal of Misc. (First) Appeal No. 151 of 1986 (Madhya Pradesh State Road Transport Corporation v. Tarabai and Anr.).

2. Both these appeals are against the award dated 24-2-1986 passed by the Motor Accident Claims Tribunal, Indore, in Claim Case No 33 of 1980, whereby the Tribunal passed the award of Rs. 34,560/- in favour of the claimant Tarabai from the date of application i.e. 6-2-1980 till the date of realisation and costs.

3. Tarabai as legal representative of the deceased filed an application for compensation of Rs. 50,000/- on the allegations that on 2-1-1980, her husband Kashinath Maratha while coming from village Narval to his home at Banganga, Indore, with a hand-pushed cart loaded with fuel, bus MPC-7361, belonging to the Madhya Pradesh State Road Transport Corporation (hereinafter referred to as "the Corporation") (appellant in the connected appeal) coming from Ujjain to Indore dashed against him as a result of which Kashinath died on the spot. According to her, the bus was driven by respondent No. 2 Dhannalal rashly and negligently. On the date of his death, his age was 45 years and was engaged in selling fuel from which he used to earn Rs. 450/- per month. She claimed Rs. 50,000/- as compensation jointly against the respondents.

4. The respondents, owner and driver, filed joint written-statement denying negligence as also the accident. According to them, the bus was driven on its side and when the driver sighted the deceased pushing the loaded cart, speed of

the bus was slowed. It appears that after the bus had overtaken the cart, the deceased could not maintain balance of the cart, which dashed against back wheels of the bus. That resulted in the entire load of fuel falling on him causing his death instantaneously.

5. The Claims Tribunal on the aforesaid pleadings, framed issues and recorded evidence of both the parties. The driver having left service of the corporation could not be produced as a witness.

6. The Tribunal estimated the age of the deceased as 50 years at the time of accident and but for the accident, would have lived upto the age of 60 years. Annual dependency was worked out at Rs. 4,320/- by adopting the multiplier of 8 years, awarded the compensation challenged in the connected appeal by the Corporation. Interest @ 9% per annum from the date of application, i.e. 6-2-1980 till the date of realisation on the aforesaid amount also awarded. Being dissatisfied with quantum, Tarabai has filed the appeal for enhancement of the compensation so also interest.

7. Learned Counsel for the Corporation argued that the learned Tribunal wrongly estimated the age of the deceased as 50 years, the annual dependency of Rs. 4,320/- and 8 as the multiplier. He also submitted that no deductions were allowed for a lump sum payment and uncertainties of the life. The award of interest is also excessive.

8. As against this, on behalf of the claimant, it was argued that the age of the deceased should have been held to be not more than 45 years and the multiplier should have been higher, looking to the age of the deceased.

9. After going through the record, in the light of the arguments advanced by counsel for the respective parties, I am of the opinion that both the appeals must be dismissed.

10. Taking the appeal filed by the claimant first, I find that the finding of the Tribunal that the deceased was about 50 years old cannot be said to be wrong. Learned Counsel for the claimant drew my attention to the post-mortem report (Ex. P-1) in which the doctor described his age to be about 45 years. Therefore, the doctor's estimate should have been preferred over the oral estimate of his age given by the witnesses. The doctor was examined as AW 4. He stated that the deceased was roughly aged about 45 years. Later on he stated that he was a middle aged person. The doctor has nowhere given reasons for his estimate. His bald opinion is not supported by reasons that the age of the deceased was 45 years cannot be accepted. It is also clear from his statement that he estimated the age only by visual observation which is only an estimate.

11. As against this Shyam Kant (AW 1) stated that the deceased was about 40 years old. Claimant Tarabai (AW 3) admitted that she could not state the age of the deceased. In cross-examination she stated that she married with the deceased when she was 20 years old, that her marriage took place about 40

years ago and that the deceased was at least 15-20 years older than she was. In this state of evidence, the Tribunal was guided by its own estimate as to the age of the claimant, namely, 45 years and on that basis, it estimated the age of the deceased at 50 years. In the absence of any documentary proof or expert opinion based on scientific investigation, the estimate of the Tribunal cannot be called perverse. There is no material on record which can persuade me to take a different view as to the age of the deceased.

12. As regards calculations of the compensation, longevity of the deceased was put at 60 years. Considering susceptibilities, the Tribunal observed that the deceased would have lived at least 8 years. It multiplied this with annual dependency of Rs. 4,320/- to obtain the figure Rs. 34,560/- which it awarded as compensation to the claimant. It is true that the manner in which the compensation was determined by the Tribunal is not in accordance with the principles laid down in various pronouncements of this Court and those of the Supreme Court. However, the compensation so determined can be justified by giving fresh look as an appeal Court.

13. Tarabai (AW 3) stated that the deceased used to earn Rs. 15/- per day by purchase and sale of fuel. Out of this, he used to give Rs. 12/- to her and spent Rs. 3/- on himself. Basant (AW 2) deposed that the deceased used to earn Rs. 15-20 per day whereas Shyama Kant (AW 1) stated that he used to earn 10-15 per day. In cross-examination Tarabai could not be shaken so far as the daily income of the deceased and the amount given to her are concerned. The statements of other two witnesses were not challenged in cross-examination. Considering the evidence of all these witnesses, it can safely be concluded that the deceased used to give Rs. 12/- per day to the claimant out of his daily income of at least Rs. 15/-. That being so, the monthly dependency comes to Rs. 360/- and annual dependency to Rs. 4,320/-.

14. As regards the multiplier, the Tribunal selected 8 years, the remaining part of his life. Learned Counsel for the claimant relied on M.P.S.R.T.C. v. Smt. Khargobai 1985 MPWN 567 wherein the age of the deceased was 50 years. Annual loss of Rs. 3,600/- was multiplied by a period of 15 years which according to the learned Judge the deceased would have lived more. On that calculation the compensation was calculated to the tune of Rs. 54,000/-. However, no interference was made inasmuch as the award of Rs. 48,000/- made by the Tribunal was held to be within limits of legal entitlement of the claim. The other case relied by him is Jankanwar v. General Manager, M.P.S.R.T.C. 1985 MPWN 463. In that case, the deceased was 55 years old at the time of his death and having regard to the Indian longevity of life, the Court estimated that the deceased would have survived upto the age of 65 years, i.e., for another 10 years. However, due to advancement of age, he may not have probably earned as he was earning at the time of the accident. The Court, therefore, preferred the multiplier of 8 and worked out the compensation.

15. In the present case, even if I take that the deceased would have lived upto

the age of 55 years, it cannot be said that the deceased would have continued to earn the same amount as he was earning at the time of his death. It has to be borne in mind that he was earning his livelihood by manual labour, namely, purchase of fuel from villages and after bringing it in a hand-pushed cart to sell in the city. Considering uncertainties of the life and his possible incapacity to undertake manual labour in future, it cannot be said that the multiplier of 8 selected by the Tribunal is altogether wrong. Moreover, if a higher figure is chosen as a multiplier, say 10 and the compensation is worked out on that basis, certain deductions have to be made roughly 20% towards a lump sum payment of the compensation. That has not been done by the tribunal at all. Therefore, overall picture which emerges out is that the compensation allowed to the claimant is reasonably correct and no interference is called for in this appeal. Interest @ 9% per annum from the date of application also cannot be said to be low. I find that interest are usually awarded from the date of award.

16. Thus, the appeal filed by the claimant has no merit and same is rejected.

17. As regards the appeal filed by the Corporation learned Counsel seriously challenged the finding of negligence recorded by the tribunal. The corporation did not examine the driver on the ground that he has left the service. There is no material on record to show that the driver could not be found out after making diligent efforts. His local address must have been in possession of the Corporation and yet none came forward to state that despite diligent search, the driver could not be traced out. Under the circumstance an adverse inference has to be drawn against the Corporation for non-examination of the driver. The conductor's statement was rightly rejected since the manner in which he wants to accept that the incident took place does not fit in the circumstances of the case. On behalf of the claimant, there is ample evidence led to prove the excessive speed of the bus at the time of the accident. The incident took place as a result of negligent driving of the bus cannot be assailed.

18. It was next argued that the Tribunal committed a mistake in accepting that the monthly dependency was Rs. 360/-. Learned Counsel argued that out of Rs. 12/- given to the claimant, the share of the deceased comes to Rs. 6/- inasmuch as the claimant must have been arranging food and there being only two members, half of it must be taken to be the amount spent by the deceased on himself, leaving Rs. 6/- only for the claimant which reduces the monthly dependency to Rs. 180/- and the annual dependency is half and half of amount estimated by the Tribunal. I am unable to accept the submission, since no questions were put in this direction much less any suggestion was made that the amount contributed by the deceased was in the manner suggested by counsel for the Corporation.

19. It was also argued that the Tribunal did not allow deductions for uncertainties of life, falling health and towards lump sum payment. I have already examined this argument while dealing with the appeal of the claimant. It is true that the Tribunal should have taken all these facts into account to determine the

compensation, but all the same the omission loses significance on account of choosing 7 as the multiplier. Keeping in view the average longevity of the Indians, the multiplier selected by the Tribunal are on the low side. This has resulted in award of low compensation. However, that has been counter balanced by the aforesaid omission committed by the Tribunal. Considering the totality of the facts and circumstances of the case, I am of the opinion that no interference is called for in the appeal against the award.

20. The appeal filed by the corporation is also dismissed.