

(1992) 02 OHC CK 0011

In the Orissa High Court

Case No : Misc. Appeal No's. 324 and 327 of 1990

The Central Reserve Police Force and Another

APPELLANT

Vs

Minati Dhal and Basudev Dhal and Another

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 173

Citation : (1993) 2 ACC 137 : (1993) ACJ 760 : (1992) 73 CLT 550 : (1992) 1 OLR 470

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : A.B. Misra and P.N. Mohapatra, for the Appellant; S.K. Padhi and Dipti Mohapatra, for the Respondent

Judgement

S.C. Mohapatra, J.—These two appeals are by the owner of the vehicle u/s 110-D of the Motor Vehicles Act, 1939 read with Section 173 of the Motor Vehicles Act, 1988. There is no cross-objection by the claimant.

2. On 7-4-1986 in the evening at about 7-15 p. m. deceased was proceeding towards Bhubaneswar side on his motor cycle after taking petrol from the petrol pump. While the deceased was coming to the patched portion of the road driving from the petrol pump slowly and cautiously bus belonging to appellant came from behind in a high speed without blowing horn and dashed against the deceased as a result of which, deceased was thrown out of the motor cycle and sustained fatal injuries on his head and chest to succumb at the spot instantaneously. Deceased was receiving pay of Rs. 1091/-at the time of his death as revealed from the pay certificate. He died at the age 29 years leaving behind his parents and widow aged about 24 years as his dependants and legal representatives.

3. Widow filed claim petition and parents filed a separate claim petition. Both the applications were heard together. One set of evidence was recorded. Owner while not disputing the accident claimed that deceased was not careful and invited the

accident himself, although driver of the bus was careful in driving.

4. Considering the materials on record, Tribunal held that the driver of the bus was negligent in driving the vehicle and since deceased was contributing Rs. 500/- to his wife and Rs. 200/- to his parents, they are entitled to compensation. It awarded Rs. 1,90,000/- to the wife (widow) and compensation of Rs. 45,000/- to the parents.

5. Owner has preferred this appeal challenging the finding about the negligent driving of the bus to be cause of accident, determination of compensation which is claimed to be excessive.

6. Nature of accident as revealed and the nature of injuries as found speak for itself. Tribunal has not relied upon the evidence of the driver of the bus since on independent investigation by Police he has been charge-sheeted by the Investigating Officer to face trial. After perusal of the evidence materials on record and after hearing learned counsel for both the parties, I am satisfied that the driver of the bus belonging to the appellant was negligent in driving of the vehicle as a result of which, deceased sustained fatal injuries. Reasons given by the Tribunal are acceptable and require no elaboration.

7. Coming to the question of determination of compensation, Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the appellant submitted that deceased was aged about 30 years and widow was only aged about 24 years at the time of accident. There was no child born out of the wedlock. Widow marriage being prevalent in the society, there is chance of her remarriage. Besides, she has been given employment on account of death of her husband by his employer on compassionate ground. In such circumstances. Tribunal ought to have taken these features with consideration while determining the compensation.

8. Mr. Padhi, learned counsel for the widow claimant submitted that widow has lost her companion of life at her young age shattering all her dreams of life and the shock she received is such that it would be permanent in nature. Stigma of being a bad woman which is easily reflected her in the present day society to which she belongs cannot be forgotten. Besides, in a society where persons responsible for marriage would not prefer the widow having lost her husband on account of her ill placed stars when girls would otherwise be available for marriage. Her parents shifted their responsibility of maintaining her by getting her married and she has lost her bread earner and life companion. Her protector in her youth is lost where the society has no regard for such destitutes. Any amount of compensation would not be substitute for these sufferings of the widow on account of loss of her life partner. Mathematically calculated, even if it is assumed that husband would not have improved further in his career, she would be entitled to much more compensation. Accordingly, the same should not be interfered with. As regards her employment on compassionate ground, it is submitted that she had been employed on account of her own qualification and

attainment and this cannot be a factor for reducing the compensation determined.

9. I am inclined to hold that mathematics may be a good servant for determining compensation. It cannot be the master to control the same. Chance of remarriage is no doubt a factor to be taken into consideration. While taking into consideration the same, the society to which the widow belongs is to be given weight to find out how far the same is practicable. Theories of book on social science should not wipe out the prevailing conditions in the society. Minimum requirement of a person who has become the destitute and the loss on account of death are to be considered cumulatively and not disjointly in such determination, there is bound to be some guess work from the circumstances as brought to record. Facts and circumstances of each case would vary in each case and precedents may give guidance but are not of binding effect in determination of compensation. It will depend upon the judicial approach of the person determining the same. Best test would be by placing him both in the position of the claimant as well as the wrong doer. What he would have willingly paid if he would have been the wrong doer and what he would have claimed if he or his near and dear ones would have suffered would influence the decision. Such person should not be miser because a person not connected with him would receive the amount or that his pocket is not going to be touched since another would pay. Popularity at cost of others should always be a voided.

10. Subsequent employment on compassionate ground is not a right of person on account of death of her husband. Accordingly, for determination of compensation, the same ought not to be taken into consideration.

11. Several decisions have been cited before me for finding out the multiple that would be applicable in the case of widow aged 24 years whose husband died at the age of 30. Taking note of all the decisions and the circumstances of this case, I am inclined to hold that multiple of 20 would be reasonable. That would mathematically bring the compensation to Rs.1,20,000/-. Expenses of Rs. 4,000/- towards funeral rites are to be added. She would be entitled to interest on the amount. It is not disputed that owner has already deposited Rs. 1,41,000/- which has been received by the widow claimant. In case, I remit the matter back for fresh calculation, it would be a time consuming process. Recovery proceeding under the Act is also not simple. The same would cause delay in receipt of the balance compensation. Accordingly, I am inclined to determine the total compensation consolidated as is payable today at Rs. 1,60,000/-. Thus, widow would receive balance of Rs. 19,000/- more. In case the amount is not paid by the owner within two months from today, this amount of Rs 19,000/- (Nineteen thousand rupees) shall carry interest @ 12% per annum from today till realisation.

12. Conning to the question of compensation payable to parents, loss of dependency at Rs. 200/- (two hundred) per month has been determined. Tribunal has reasonably calculated the same to come to conclusion that they are entitled to receive compensation of Rs. 45, 600/-. I am not inclined to interfere

with the same. Said amount shall carry interest @ 12% from the date of application till the date of payment or realisation, as the case may be. In case, however, payment is made within two months from today, appellant shall get a rebate of 3% per annum and shall pay such interest at 9% per annum from the date of application till date of payment within two months.

13. In the result, M.A. No. 324 of 1990 is allowed in part and M.A. No. 327 of 1990 is dismissed. There shall be no order as to costs.