

(1986) 09 BOM CK 0001
In the Bombay High Court

The Manager, The Government Milk Supply Scheme and
Others

APPELLANT

Vs

Prashant Chandrakant Gandhi and Others

RESPONDENT

Date of Decision : 18-09-1986

Acts Referred:

Citation : (1987) 1 ACC 333

Hon'ble Judges : Kantharia, J; Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—We have heard this appeal with the Record and Proceedings. This is filed by the Original Defendants against the award passed by the Member of the Motor Accident Claims Tribunal, Kolhapur dated 30th of July 1985.

2. It is contended by Shri Page, learned Assistant Government Pleader that the claim made by the two sons of the deceased was hopelessly barred by limitation. Admittedly the deceased Chandrakant Gandhi died on 7th of May 1967 as a result of an accident which took place on 6th of May 1967. The claim application was filed sometime in the year 1981. Therefore it was hopelessly barred by limitation. It is not possible for us to accept this contention for more than one reason. The question as to the limitation was decided in Misc. Application No. 1 of 1982 which was filed by the claimants for condonation of delay. The delay came to be condoned and the claim was admitted. Against the said decision Civil Revision Application was filed before this Court which was also dismissed on merits. Against that SLP was filed in the Supreme Court of India which also came to be rejected. Thus the matter stands concluded so far as this Court is concerned. Even otherwise we do not feel that it will be fair, on the part of the appellants, who are responsible officers, to deny the reasonable claim of the claimants on the ground of limitation. Normally the question of limitation should not be raised by the Government Officers to defeat the just claim of the citizens. Therefore we do not find any substance in this contention.

3. So far as the question of negligence is concerned the learned Presiding Officer

has recorded a finding that the driver of the Milk Van was negligent in driving his vehicle. PW 4 Shivrul Shah who was an eye witness to the accident has stated in his deposition that the milk van came by the wrong side and it was in high speed and gave dash to the scooterist by its right front side. It gave dash to the scooterist when the scooterist had come ahead at a distance of 15 feet towards the east of the 4th lane, Shahupuri. After the dash the scooterist was dragged ahead at some distance about 15 to 20 feet and thereafter towards the left hand side. Practically there is no cross-examination of this witness on merits of his evidence. Further the driver of the van has not entered into the witness box nor is examined by the defendants. Exhibit 55 is the accident report. From this Exhibit it is also quite clear that the milk van gave a dash to the scooterist from its right front side and because of the same the scooterist was dragged away at some distance in front of the milk van. Therefore the oral evidence of the witness gets substantial corroboration in Exhibit 55. In these circumstances in our view the learned Presiding Officer was wholly right in coming to the conclusion that the accident took place because of rash and negligent driving of the driver of the milk van.

4. It was then contended by Shri Page that the quantum of compensation as granted by the lower court is excessive and unreasonable. We do not find any substance in this contention also. Admittedly the deceased died when he was only 39 years of age. He was a Chartered Accountant who was paying Income Tax. From the evidence on record it appears that he was also serving as part time lecturer in Commerce College. The total income of the deceased is assessed by the trial court at Rs. 9520/- only. After leaving a margin for the amount which the deceased must have been spending for himself, the learned Member came to the conclusion that the deceased was contributing towards family expenses at least an amount of Rs. 6315/-. In our view the learned Member if at all has erred on the side of leniency. While deciding the compensation he had not taken into consideration the fact that in the years to come the deceased would have earned much more. The compensation is calculated on the basis of the expectancy of life of the deceased at 65 years. It has come on record that the deceased was hale and hearty, and, therefore, it cannot be said that the expectancy of the age as calculated is in any way on higher side. Therefore taking any view of the matter the compensation granted cannot be termed as unreasonable or excessive.

5. However, a grievance was made by Shri Page that the learned Member committed an error in granting interest at the rate of 6% p.a. from the date of the death of the deceased. In our view the ends of justice will be met if the interest is granted at the rate of 6% p.a. from the date of the application instead of from the date of death. This is being done as the claim was preferred too late. So far as the further interest is concerned it is not necessary to go into the said question since the amount is already deposited.

Hence the appeal is partly allowed with no orders as to costs, to the extent of grant of interest from the date of the application instead of from the date of the

death of the deceased. On all other counts the findings recorded by the trial court are confirmed. The claim was made by the twin sons after they became major. The name of the wife of the deceased and the mother of the children was not included as one of the claimants. Obviously she will be entitled to the compensation. Shri Rege, learned Counsel for the Respondents-claimants made a statement before us that 1/3rd of the amount awarded for compensation will be paid to Smt. Shalinibai the mother of the claimants and the wife of the deceased. Therefore the trial court is directed to pay 1/3rd of the amount of compensation to Smt. Shalinibai Gandhi wife of the deceased-Chandrakant Gandhi and the mother of the claimants. To the extent indicated above the award passed by the trial court stands modified.