

(1990) 11 AHC CK 0039
In the Allahabad High Court

The State of U.P. and Others

APPELLANT

Vs

Dhan Kunwar Alias Khema Devi and Others

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Citation : (1991) 2 ACC 673 : (1990) 1 AWC 319

Hon'ble Judges : R.R.K. Trivedi, J;K.P. Singh, J

Bench : Division Bench

Judgement

R.R.K. Trivedi, J.—This appeal has been preferred against the award dated 22nd March, 1980 given by Motor Accident Claims Tribunal, Bareilly in Claim Petition No. 5 of 1978 filed by respondents 1 to 4.

2. The facts in brief giving rise to the aforesaid Claim Petition are that on 6-12-1977 at about 8.30 p.m., one Sri Honkesh war Singh who was employed as a Mistri in the Wagon-shed of North-Eastern Railways, Izzatnagar, Bareilly was hit by Jeep No. USE 6123 which was driven by respondent 5, Prem Singh Rawat. Sri Honkeshwar Singh was aged 35 years, who was badly injured and succumbed to the injuries after about two hours of the accident. Jeep was owned by the appellants and at the relevant time it was in possession of the Sales-tax Department of U.P. State.

3. The Claim Petition was filed by the widow of the deceased Hari Singh and Devi Singh, his two minor sons and Smt. Kethi Devi, the mother of the deceased. The case of the claimants was that the deceased was going on a bicycle on the left side of the road. The aforesaid jeep was driven rashly and negligently, it came to the extreme right side and dashed against the deceased, causing his death. It was stated in the claim petition that the deceased was earning Rs. 611.50 paise per months as salary and all the claimants were dependent on the income of the deceased.

4. The Claim Petition was resisted by the appellants inter alia on the allegations that at the relevant time, the Jeep was allotted to the office of Assistant

Commissioner, Sales-tax A.D. Sharma, Sales-tax Officer, Bareilly had taken the jeep for the survey work after obtaining the necessary permission and had returned at 6 p.m. The driver respondent 5 was instructed to keep the jeep in garage. The jeep was however, taken out by the driver without permission and information to the officer of the Department. It was also alleged that at the relevant time, driver was badly drunk. The driver dashed against a rickshaw before causing accident resulting in death of the deceased. It was pleaded that the appellants 1 to 3 were not liable to any compensation for the unauthorised and illegal action of their driver. It was also alleged that the amount claimed is imaginary and exorbitant.

5. The Motor Accident Claims Tribunal after hearing the parties accepted the claim of the respondents 1 to 4 and passed the impugned award granting Rs. 80,000/- as compensation payable jointly and severally by appellants 1 to 3 and respondents 5. Aggrieved by the aforesaid award, appellants have filed this appeal.

6. We have heard the learned Standing Counsel appearing for the appellants and have perused the record. The award passed by the Tribunal has been assailed before us on two groups. Firstly, that as the driver respondent 5 was driving the jeep at the relevant time without any authority and permission of the officer concerned. The appellants could not be vicariously liable for his illegal action causing accident resulting in death of the deceased. The aforesaid submission made on behalf of the appellants, in our opinion, is without any substance. The appellants failed to examine any witness to prove the fact that the driver respondent 5 had no authority to ply the jeep at the time of accident took place or that he was not driving the jeep for the official purposes. Even the driver of the jeep has not been examined nor had he filed any written statement. The allegation made in the written statement filed by the appellants could not be read as evidence. The appellants ought to have adduced evidence in support of their plea. In absence of the evidence, the view taken by the learned Tribunal that the respondent 5 was driving the vehicle with authority and for official purposes is correct on the material on record and fully justified.

7. The second submission made on behalf of the appellants is that the amount awarded is excessive and against the facts and circumstances of the case. The basis for this submission firstly is that the learned Tribunal has wrongly assumed that the deceased could have remained alive up to the age of 65 years, in absence of any evidence establishing the expectancy of the life in the family of the deceased. The submissions of the learned Standing Counsel are devoid of merit. On record there is evidence to show that the learned Tribunal has taken correct view that the deceased was expected to live up to the age of 65 years. The mother of the deceased respondent A--Smt. Kethi Devi was 60 years old at the time of filing the Claim Petition in the year, 1978. It appears that she is still alive. PW 5 Smt. Dhan Kunwar, the widow of the deceased has stated in her statement on oath that the deceased had a robust health and had no bad habits

such as drinking or smoking. Her aforesaid statement remained uncontroverted.

8. In the aforesaid facts and circumstances it could be easily assumed that the deceased could remain alive up to the age of 65 years. It is also noteworthy that in the present days the normal expectancy of the life in the country has gone higher due to the increased medical and other facilities. In the present days normal expectancy of life is 70 years. The view taken by us is fortified by the opinion expressed by Supreme Court in a case *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, . In this case, their Lordships have observed in paragraph 8 of the judgment in the following manner AIR 1977 SC 1162:

The Courts below have also not considered the effect of the pensionary benefits which the deceased Raha would undoubtedly have got after retirement and, in fact the Claims Tribunal has restricted the span of the life of the deceased only to the age of 55 years i.e. the age of superannuation whereas in the present economic conditions the life of an average Indian has increased more than twofold. It is, therefore, reasonably to expect that if the deceased had not died due to accident, he would have lived up at least up to the age of 65 years, if not more so as to earn the pensionary benefits for 10 years after retirement.

9. Relying on the aforesaid decision of the Hon'ble Supreme Court, this Court has also observed in *Smt. Radha Agarwal and Another Vs. State of Uttar Pradesh and Another*, , that of late the medical facilities have greatly increased. As a result of which longevity had increased. The deceased could have lived up to the age of 65 years. In this case, the learned Tribunal had taken the view that the deceased could have lived up to the age of 60 years. Their Lordships however, determined the pension taking normal expectancy of the life up to the 65 years. In recent decision of the other High Courts the longevity of an average person has been taken to be 70 and 75 years. See *Srisailam Devastanam Vs. Bhavani Pramamma and Others*, . Thus, the view taken by the learned Tribunals is correct and justified in the facts and circumstances of the case.

10. The second submission of the learned Counsel against the quantum of the award is that the deceased would have retired from service at the age of 58 years and the learned Tribunal committed an error in assuming the same income of the deceased up to the age of 65 years. In our opinion, the submission is not correct. At the time of death deceased was only 35 years of age and still there were 23 years for him to remain in service on his post. In normal course he could have availed the promotion and the higher pay scales. There has been revision of the pay scales twice during this period. The deceased would have been getting much higher pay scale if he had not died due to the accident and had attained the age of superannuation. He would have been getting the pension almost equal to the amount of salary, he was getting at the time of death.

11. Thus, the learned Tribunal has not committed any error in fixing damages at the same rate for the period of 30 years. The amount awarded by the learned Tribunal in the facts and circumstances of the case is just and proper. The award

of the Tribunal in our opinion do not suffer from any illegality.

12. For the reasons mentioned above, the present appeal has no force and is liable to be dismissed. The appeal is accordingly dismissed. However, there will be no order as to costs.