
(2003) 02 BOM CK 0020
In the Bombay High Court
Case No : First Appeal No. 130 of 1984

Tukaram Vajinath Bahirwal and Another	APPELLANT
Vs	
Smt. Nasib Kaur and Others	RESPONDENT

Date of Decision : 15-02-2003

Acts Referred:

Citation : (2003) 3 ALLMR 1090 : (2003) 105 BOMLR 122

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.S. Zoting, J.—This is an appeal preferred by the original petitioners against the judgment and award dated 31st October, 1983, passed by the District and Sessions Judge and Ex-Officio Member, Motor Accident Claims Tribunal, Beed, in Motor Accident Claim No. 4 of 1980, whereby compensation to the tune of Rs. 25,000/- has been awarded with interest at the rate of six per cent per annum.

2. Facts relevant for decision of this appeal may be briefly stated as under.

Accident took place on 15th March, 1980. On account of the vehicular accident the father of the appellants received injuries and he succumbed to the said injuries on the very day. The appellants are the son and the daughter of deceased Vajinath. They filed the petition for grant of compensation to the extent of Rs. 50,000/-. The truck owned by respondent No. 1 and driven by respondent No. 2 was involved in the accident. The said truck was insured with respondent No. 3. The age of deceased Vajinath at the time of accident was about 40 years. He was agriculturist. On the fateful day of the accident, he along with some other agriculturists went to the "Market Committee office" to sell agricultural produce. He parked the bullock cart 8 to 10 cubits away from the road and he was sitting on the cart. It is alleged that at that time the said truck came at high speed and while negotiating a turn, the truck run over Vajinath. He was shifted to Civil Hospital, Beed in an injured condition. However, he succumbed to the injuries at

about 1.00 p.m. The deceased Vajinath was also dealing with the business of selling milk. His annual income was not less than Rs. 6.000/-. The appellant No. 2 was minor, whereas the appellant No. 1 was only 20 years old at the time of death of Vajinath. Two months after the accident the mother of the appellants also died. It is alleged that deceased Vajinath was the victim of rash and negligent driving on the part of driver of the said truck. Therefore, the appellants claimed compensation from the owner and driver of the said truck as well as from the Insurance Company with which the truck was insured.

3. The respondents resisted the claim by filing their written statements before the Tribunal. The owner and the driver of the truck contended that the truck was not in speed as the driver was intending to park it, therefore, he had already lowered down the speed. It was contended that while negotiating the turn the driver gave a signal of turn, however, the deceased did not move from the side of the truck and thus, according to them, it is the sheer negligence of the deceased himself as a result of which he came under the rear wheel of the truck and the driver is not at all responsible for, the accident. They have also denied the income as disclosed by the appellants. According to them, the income of the deceased shown by the appellants is exaggerated. It is contended that deceased Vajinath was mentally and physically weak and as such he was not engaged in any economic activity. For the above reasons they claimed dismissal of the petition.

4. The Insurance Company (respondent No. 3) reiterated the same stand as taken by the owner and the driver of the truck. However, the fact that the truck was insured with the Insurance Company during the relevant period of the accident has not come to be disputed.

5. In view of the rival contentions raised by both the parties, issues were framed by the learned Member of the Tribunal at Exh. 26. The appellants who are original claimants adduced evidence of three witnesses including appellant No. 1. However, as against the said evidence, the respondents have not adduced any evidence either documentary or oral, nor any of them entered into witness box to depose on oath. Considering the evidence on record, the learned Member of the Tribunal held that the accident took place because of the rash and negligent driving of the driver of the truck and in that accident deceased Vajinath died. He assessed the compensation to the tune of Rs. 25.000/-. Thus, the learned Member had partly allowed the claim of the present appellants directing the present respondents to pay the said sum severally and jointly to the present appellants with interest at the rate of six per cent per annum from the date of petition till realisation of the amount. He also awarded proportionate costs directing the respondents to pay the costs to the appellants.

6. Being dissatisfied with the quantum of the compensation awarded by the Tribunal, original claimants have preferred the appeal challenging the correctness of the quantum of compensation fixed by the learned Member of the Tribunal.

7. Shri M.K. Deshpande, learned Counsel for the appellants contended that though the learned Member held that the annual income of the deceased was to the extent of Rs. 5,000/- and calculated the compensation by adopting a multiplier of 15, the learned Member was in error to come to his finding in awarding compensation to the extent of Rs. 25,000/- only though as per the calculations the said compensation ought to have been worked out to the extent of Rs. 50,000/- after deducting 1/3rd of the amount towards own maintenance of the deceased.

8. As against this, Shri Soman, learned Counsel for the respondent No. 3 has fully supported the judgment and award passed by the Tribunal. He contended that the claim put forward by the appellants is exorbitant and excessive and the learned Member has rightly come to the conclusion that the appellants are entitled to receive the compensation to the extent of Rs. 25,000/- only.

9. As regards occurrence of the accident the appellants have relied upon the evidence of Shahadeo witness No. 2 at Exh. 57. He was accompanied by deceased Vajinath when he visited the Market Committee office for the purpose of sale of agricultural produce. He deposed that deceased Vajinath parked his cart in front of the "Market Committee office" and the said cart was at a distance of 8 to 10 cubits from the road. He further stated that at that time deceased Vajinath was sitting on the cart. However, the truck involved in the accident came towards the office at high speed and while negotiating the turn the driver could not control the truck and the truck left the road and came to the open space where the cart was parked and the truck passed over the waist of deceased Vajinath, as a result of which he sustained serious injuries and he succumbed to the said injuries on the very day in the hospital. During the cross-examination, the evidence of this witness remained unshattered. His presence has not come to be disputed. This witness in his cross-examination has categorically denied the defence taken by the driver of the truck. The driver of the truck has not come in witness box to depose on oath as to how the accident occurred and what steps were taken by him to avoid the accident. It is well known that when a person makes a statement on oath the presumption is that he speaks the truth because of the oath he takes and the burden must be on him who challenges the veracity of that statement to show that it is not correct. If this burden is not discharged by any of the legal recognised methods the court can have no justification for not relying upon the testimony of such witness.

10. As there appears no material to disbelieve in the testimony of witness Shahadeo, the story narrated by this witness as regards the actual occurrence of the accident showing negligence on the part of the driver for causing the death of Vajinath will have to be accepted as true. Consequently, I find that the learned Member of the Tribunal has rightly held that the accident took place because of the rash and negligent driving of the driver of the truck. He has rightly held that the respondents failed to prove that the driver of the truck was driving the truck with slow speed and despite of such low speed the accident occurred due to

sheer negligence of the deceased. He negated the contention of the respondents that the deceased came under the rear wheel of the truck.

11. This brings me to consider the appellants' claim. While assessing the compensation for wrongful death, there can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations, but the amount recoverable depends upon the particular facts and circumstances of each case. For determining the just amount of compensation, multiplier method appears to be realistic and reasonable and ensure better justice between the parties, and it is well followed in the practice. The most "just and reasonable" view appears to be that the total amount of compensation should be arrived at by multiplying the annual dependency by a suitable multiplier. The sole basis of awarding compensation to the dependent of the deceased is that on account of culpable negligence or default of the offender, a valuable life which was the source of livelihood to the claimants is terminated. Before the termination of life, the deceased was making earning through agriculture. A part of the same he was spending for his own maintenance and the remaining was being utilised for upkeep and maintenance of the dependents who are his wife and children. Thus, abrupt termination of life of deceased results in loss to the dependents. The basic figure of annual dependency has, thus, to be determined after excluding the amount which the deceased was spending on himself.

12. It is to be noted that deceased Vajinath was an agriculturist. It has come in evidence that he owned 20 to 22 acres land and most of his agricultural land was having irrigation facility. The appellants had produced 7/12 extracts before the Tribunal. It has also come in evidence that he was personally cultivating the said land. At this stage, it is to be noted that while estimating the damages in case of agriculturist, the value of supervisory services and the value of services as farm servant need to be considered. The question of estimating damages on the death of an "agriculturist" owning agricultural land and cattle, has engaged the attention of various High Courts in our country from time to time. His Lordship of Andhra Pradesh High Court at Hyderabad in D. Vinoda and Others Vs. B. Basava Raju and Others, , after referring to as many as 17 cases of various High Courts summarised the principles regarding estimating damages on the death of an agriculturist, as under :

(i) In the case of death of an agriculturist owning agricultural land, the value of the "supervisory" services of the deceased have to be first estimated. This will not be merely equivalent to the value of the services of a farm servant or a manager of the property employed for that purpose. It will be more than that because an owner manager takes extra care in increasing the income year by year and also in increasing the value of the property. After thus estimating the "special" value of the supervisory services of an "owner-manager" a deduction is to be made in respect of the money the deceased would have spent for himself out of such sum and then the annual contribution to the family is to be arrived

at. Then an actuarial multiplier suitable to the age of the deceased has to be applied.

(ii) It is not permissible to say that no amount need be awarded towards the loss to the dependency merely because the corpus of the agricultural land is left intact for the dependents. When in case of death of non-cultivators who have other properties the properties remain intact and still damages are awarded, there is no reason why on death of cultivators who have agricultural land, a negative attitude should be taken. The general practice of making automatic deductions for the value of property inherited has fallen into desuetude. The value of the accelerated receipt of property cannot according to the Privy Council be treated as a total or partial equivalent of the loss to the dependency inasmuch as the said acceleration has to be set off against the loss of saving of the deceased to the family. At the other extreme, it is equally not permissible to capitalise the income from the land by a number of years' purchase.

I agree with the view expressed by the said Court.

13. As regards the value of supervisory services, it is to be noted that deceased Vajinath being agriculturist was supervising the agricultural operations as well as doing agricultural work. On account of the death the son and daughter of the deceased are deprived of the value of supervisory services and the value of services as farmer rendered by deceased Vajinath for earning the livelihood.

14. It has come in evidence of appellant No. 1 Tukaram Exh. 41 that since the death of his father he had to employ agricultural servant and he paid him Rs. 2,500/- per year. This evidence has gone unchallenged during the cross-examination of the witness. Therefore, loss as regards the value of services as farm servant will have to be assessed to the extent of Rs. 2,500/- per year. The agricultural labourers use to work during fixed period during the course of the day without shouldering any responsibility to profit or loss from the agriculture, but the owner of the land has to look after cultivation throughout the year. He has to take steps for increasing the income from the farm year by year and also in increasing the value of the property. Therefore, the value of supervisory services of the agriculturist in addition to the value of services as farm servant will have to be taken into consideration while assessing the damages. There cannot be any exact uniform rule for measuring the value of the supervisory services, however, it depends upon the facts and circumstances of each case. Considering the facts and circumstances of the present case as well as the extent of the agricultural land held by deceased Vajinath, it would not be unreasonable and unjust to assess the value of his supervisory services to the extent of 50% of the value of services as servant, and as such the value of supervisory services of deceased Vajinath comes to the extent of Rs. 1,250/- per year and total of the value of supervisory services and as farm servant comes to the extent of Rs. 3,750/- per year. Deducting 1/3rd of the said value towards own maintenance of deceased, the figure comes to Rs. 2,500/- per year, which could be utilised for the upkeep and maintenance of the family of deceased. Thus, loss due to abrupt

termination of life of deceased can be assessed to the extent of Rs. 2,500/- per year. It has come in evidence of the appellants as well as witness Narayan Exh. 58 that the age of deceased Vajinath at the time of his death was 40 years. Taking into consideration the age of the deceased, it would be just and proper to adopt a multiplier of 16, whereby the total loss on account of termination of life of deceased, which can be recoverable from the respondents comes to the extent of Rs. 40,000/-. The original opponent No. 2 being the driver of the truck involved in an accident, which occurred on account of his negligence, the original opponent No. 1 being the owner of the said truck is vicariously liable for the act of the employee (original opponent No. 2) and the opponent No. 3 being Insurance Company with which the vehicle involved in an accident was insured during the relevant period of accident are jointly and severally liable to pay the said sum to the present appellants by way of compensation. Thus, the appellants are entitled to recover the compensation to the extent of Rs. 40,000/- from the respondents. However, the learned Member of the Tribunal assessed the compensation to the extent of Rs. 25,000/-, which needs to be modified by substituting the figure Rs. 40,000/- in place figure Rs. 25,000/- in the award. The award passed by the Member of the Tribunal thus deserves to be modified,

15. In the result the appeal is allowed. The award dated 30.10.1983 passed by the Member, Motor Accident Claims Tribunal, Beed in Motor Accident Claim No. 4 of 1980 stands modified accordingly. The respondents (original opponents) Nos. 1 to 3 severally and jointly shall pay Rs. 40,000/with interest at the rate of six per cent per annum thereon from the date of petition till realisation of the amount, to the appellants (original petitioners/claimants). Both the appellants are entitled to receive in equal shares the said amount of compensation with proportionate costs throughout.