
(1976) 03 DEL CK 0003
In the Delhi High Court
Case No : F.A.O. No. 35 of 1972

Union of India (UOI) and Another

APPELLANT

Vs

Shakuntala Devi and Others

RESPONDENT

Date of Decision : 02-03-1976

Acts Referred:

Citation : (1976) ACJ 358

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : P.P. Malhotra, for the Appellant; R.K. Mehra, for the Respondent

Final Decision : Allowed

Judgement

B.C. Misra, J.—This order will dispose of two first appeals (FAO 35 of 1972 and FAO 90 of 1972). The first mentioned appeal has been filed by the Union of India, while the second mentioned cross appeal has been filed by the private party, who are the legal representatives of the deceased. Both the appeals are directed against the same order of Mr. Shiv Dass Tyagi, Motor Accidents Claims Tribunal, dated 13th April, 1971, by which he has awarded a sum of Rs. 16,640/- to the party (herein referred to as the "Respondents")

2. The material facts of the case are that Om Parkash, predecessor-in-interest of the Respondents, met with an accident on 9th April, 1964 at about 3.45 p.m. near the crossing of North Avenue Road and South Avenue Road in Punjabi Bagh. At that time he was driving a scooter, BRP 4330, and a jeep No. SB 20990 belonging to the Military authorities and owned by the Appellant Union of India, struck against the back of the scooter resulting in felling down of the deceased and his getting injured and he died on the spot. The legal representatives claimed a sum of Rs. 1,50,000/- as damages on account of rash and negligent driving of the jeep on the part of the driver in the employment of the Appellant. The claim was contested on behalf of the Appellants before me and the negligent and liability were denied.

3. The occurrence of the accident and the resultant death of Om Prakash, deceased, are not disputed in the case. The variance between the parties relates to the negligence of the jeep driver. There are two versions as to how the accident occurred. One version urged by the Respondents is that the scooter driven by the deceased took a turn from the left and was going ahead on the main road, while the jeep driven at a high speed came from the back and struck against the scooter and felled it. The version on behalf of the Appellants is that the jeep was going at a normal speed on the main road, while the scooter took a turn from the left into the main road and the driver losing balance struck against the left hand rear wheel of the jeep. The court below has found the version of the Appellants to be false.

4. Falsity of this version finds support from two pieces of evidence. R. W. 4 Capt. S.C. Dass, examined for the Appellant Union of India deposed that he was at the E.M.E. Workshop and the jeep in question was examined by Naik and the report was verified and countersigned by him. The report shows that the near side front mud-guard of the jeep had been dented. By near side, the witness meant the left-hand side. He admitted that the said damage could be more to the light vehicle in case of collision of a light vehicle with a heavy vehicle. The witness also stated that the paint work required painting and the windscreen glass had been broken. This damage is in addition to the other damages noticed in the report. The vehicle was also examined by the Sub-Inspector of Police, Accident Squad, who was examined as P.W. 4. He stated that there was a small dent in the front left portion of the jeep and the paint of the scooter was also present on that portion. The evidence of these two witnesses would establish that the front portion of the jeep struck against the back of the scooter and so the version of the Respondents' witnesses is correct and the story set up on behalf of the Appellants is highly improbable.

5. The Appellants have tried to support their version from their evidence. R.W. 1, Jaipal Singh, stated that the scooterist emerged from left hand side when the jeep was at the centre of the road crossing and the scooterist hit the rear left wheel of the jeep which was stopped at the distance of 50 feet from the place of the impact. The witness, however, admitted in cross-examination that his attention was drawn to the accident when he heard the noise of the impact and he did not care to see any marks on the road of the tyres, nor did he know if the jeep was mechanically examined. R.W. 2, Mr. O.N. Sood stated that the jeep had" covered half of the crossing when he heard a bang and the jeep was stopped after traversing 60 feet and on getting down he saw that a scooterist had dashed against rear left portion of the jeep. R.W.3, Radha Singh, driver, stated that he had covered half of the crossing when he heard noise of some impact with the jeep from its rear portion and he stopped the jeep and found the scooterist lying in a pool of blood. He has stated that his speed was 40 kms. per hour. In cross-examination he stated that he had seen the scooterist before the impact and he had slowed down the speed of the jeep while entering the crossing and the scooterist was about 600 feet from the crossing when he saw him and

the jeep was at a distance of about 200 feet from the crossing. The width of the road was 12 feet. R.W. 4 is the last witness on behalf of the Appellants about whom I have stated above. None of these witnesses explains the damage to the front portion of the jeep which has been proved by the Sub Inspector of Police as well as R.W. 4.

6. The version of the accident put forward by the Respondents has been established by the evidence of P.W.I and P.W.2, who were the eye witnesses to the accident. P.W.I, Karam Chand, stated that he was going to Punjabi Bagh from Rohtak Road and when he was near Punjabi Bagh he saw a jeep coming from Palam side at a very fast speed and a scooter was coming from Madipur side. The scooter took a turn towards its left and was going towards Rohtak Road when the scooter was knocked down by the jeep. The jeep driver did not blow any horn or slowed down the speed before entering the crossing, and the scooter was dragged upto a distance of 10/15 feet. The jeep stopped at a distance of 30/40 yards from the place of accident. In cross-examination the witness stated that the speed of the jeep was 50/60 miles per hour, while the speed of the scooter was 10/15 miles per hour. P.W.2, Lachman Das, corroborated the statement of P.W.I. He stated that he was going on his scooter and another two wheeler scooter was going ahead of him. That scooter took a turn, on its left side and at that time a jeep came from the right hand side of the witness on fast speed and did not slow down the speed before entering the crossing and then knocked down the scooter from behind and the jeep stopped at a distance of 40 yards from the place of impact. The scooter driver had gone about 15 yards ahead of the crossing. There is nothing in the cross-examination of the witness to cast a doubt on his veracity. The site plan prepared by the Investigating Officer also shows that the deceased had been dragged and was found several feet away from the point of impact. The evidence on record, therefore, establishes that a jeep which stopped at a distance of about 30/40 yards, that is to say about 120 feet, must be driven at the speed of about 40 miles per hour (vide Bingham's Motor Claims Cases page 107). This speed was not only excessive as the permissible speed limit within the jurisdiction of the Municipal Corporation is 30 miles or 48 kms. per hour, but in any event, for use on the crossing, speed of even 40 kms. per hour admitted by the driver R.W.3 must indeed be high. But I do not wish to rest the case merely on high speed of the jeep. The evidence further leaves no room for doubt that the scooter had already turned and the jeep came from behind and its front portion struck against the back of the scooter. This cannot but be a result of negligence on the part of the driver of the jeep, who rashly and negligently drove it and struck against the scooter. After the scooter had fallen, it had been dragged for some distance. The court below has found that the accident had been caused owing to rash and negligent driving of the driver of the jeep which belonged to the military authorities of the Union of India and as such the Appellants before me were liable to pay damages to the Respondents. The finding of the Tribunal on this point does not suffer from any legal infirmity and I agree with its reasoning and

conclusion and affirm the findings.

7. In the matter of award of damages, the court below has found that the deceased was earning an income of Rs. 300/- per month, out of which Rs. 140/- he was spending on himself and he was contributing to the family Rs. 160/- per month or Rs. 1,920/- per annum. The Respondents have urged that the court below ought to have accepted the evidence that the deceased was earning Rs. 2,000/- per month. But this evidence has rightly not been believed by the court below and the case on this point is not supported by any reliable evidence and so I endorse the finding that the contribution of the deceased to the family was Rs. 1,920/- per annum. The court below has, however, fallen into an error in applying the multiplier of 13 years and making a deduction of 1/3rd on account of capitalized income. The Tribunal below has found that the deceased was 33 years of age. Normally, the life span in this part of the country can easily be taken to be 50 years. A higher longevity can also be established, but that should be done by evidence of family history.

8. In *Amarjit Kaur v. Vanguard Insurance Co. Ltd.* 1962 A.C.J. 286; V.S. Deshpande J. observed in paragraph 13 that the average life expectancy in India was about 50 years and that a multiplier of 12 to 15 years be applied for determination of dependency of the family. In the *Times of India Directory and Yearbook* for 1974-75, it is stated on page 126 that the expectation of life at Birth and Death Rates for the period from 1971-75 is 50.7 years for males 49.3 years for females. Consequently, as a general rule, in the absence of any evidence to the contrary, the average life span can be accepted as 50 years.

9. The principles of law for the award of compensation are well settled. In *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601 the Judicial Committee laid down the mode of estimating the damages thus:

At first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and possibility of premature determination of his life by later accidents ; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his life time, and other circumstances ; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum, payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate ; and fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life, and it should be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position.

The Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, approved the said principles and summed up thus:

Shortly stated, the general principle is that the pecuniary loss can be ascertained

only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and again to the dependant by the death must be ascertained.

The amount of benefit in the instant case has been properly determined at Rs. 1,920/- per annum. But the multiplier that the court must have applied is 15 and not 13. In *Buckley v. John Allen and Ford* 1967 A.C.J. 280 the life expectancy of the deceased was taken to be for 15 years, though the deceased was only 35 years of age. Winfield on Torts, 8th Edition page 620, has commented that in the case of death of a normal healthy man, the maximum number of years assuming full dependency is likely to be between 12 and 15 years. The Tribunal below has not given any valid reason why it has adopted the multiplier of 13. In my opinion the dependency would be determined by applying the multiplier of 15 years to the amount which was spent by the deceased on the family. Fifteen years are again the period that is necessary for the minor children to grow up to settle in life when they can begin to have other income. Under these circumstances, considered from any point of view, I would apply the multiplier of 15 and capitalize the loss at Rs. 28,800/.

10. Some deduction has, however, to be made from the accelerated capitalized income on account of lump-sum payment and uncertainty of life. This High Court in a Division Bench authority, *Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others*, held that 15% was the correct deduction to be made and not 33 1/2 %. It referred to another Division Bench authority of this Court in *Ishwar Devi Malik and Others Vs. Union of India and Others*, where 15% was considered to be reasonable and the Division Bench did not agree with the other decision of the Single Bench of this Court in *Amarjit Kaur v. Vanguard Insurance Co. Ltd.* 1969 A.C.J. 268 Consequently, I deduct from it 15% from the capitalized value of the dependency and hold it to be reasonable. After deduction of 15%, amounting to Rs. 4,320/- from Rs. 28,800/- we are left with a sum of Rs. 24,480/- and in order to round it off, I would fix the amount of compensation payable to the Appellants by the Respondents at Rs. 25,000/-. The award of the Tribunal below is accordingly modified and enhanced to Rs. 25,000/-. Out of this amount a sum of Rs. 3,000/- would be paid to the mother and the balance to other Respondents, i.e. the widow and the three children in equal shares.

11. As a result, the appeal of the Union of India (FAO 35 of 1972) is dismissed, while the cross-appeal (FAO 90 of 1972) is partly allowed. The parties are left to bear their respective costs in both the appeals.