
(1986) 08 MP CK 0021
In the Madhya Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

Balwant Kaur and Others

RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1986) 2 ACC 525

Hon'ble Judges : P.D. Mulye, J;B.B.L. Shrivastava, J

Bench : Division Bench

Judgement

P.D. Mulye, J.—This appeal filed u/s 110-D of the Motor Vehicles Act is directed against an award dated 31-10-81 given by the Member, Motor Accidents Claims Tribunal, Shajapur, in Claim Case No. 9 of 77, whereby he has awarded a total compensation of Rs. 55,915/- plus costs, though the respondent-claimants had put up a claim for Rs. 2,88,000/-.

2. The facts giving rise to this appeal, which are no longer in dispute may be stated, in brief, thus: That the deceased Shri B.K. Khalsa, who was an employee of the appellant Union of India, had in the month of January, 1977 gone to Shajapur for the purpose of audit and up-to 12-1-77 he had inspected the audit work in the office of PW 1, Survey and Construction; that Shri S.P. Mathur was the Divisional Officer under whom the deceased was working; that Shri Mathur had gone to Shajapur in connection with the audit work done by deceased B.S. Khalsa. On 14-1-77 Shri S.P. Mathur had requested Shri R.S. Verma, Executive Engineer, S and C, to provide him with jeep No. MPH-8198 belonging to the Railway for going to Berchha as Shri Mathur wanted to return to Kota which is his headquarters. Accordingly at about 9.30 p.m. Shri Mathur left Shajapur in the said jeep for Berchha along with the deceased B.S. Khalsa. The driver of the said jeep was Narayan Singh, who died in the accident. While returning from Berchha to Shajapur the jeep met with an accident as a result of which the deceased B.S. Khalsa received injuries for which he was immediately admitted in the Civil Hospital at Shajapur, wherefrom for further treatment he was shifted to Kota and

ultimately to Bombay where he died in the hospital on 4-2-1977.

3. The claimant-respondents, who are the legal representatives of the deceased being his widow and children filed the present claim petition on an allegation that the accident occurred because of the rash and negligent driving of the jeep driver, who drove the same at such an excessive speed that after taking a somersault it was thrown at some distance and as a result of the said accident the driver Narayan Singh died and the deceased sustained fracture of the pubic remus bone, as was revealed from the X-ray taken. The injured Khalsa was first taken to the hospital at Shajapur where he was kept till 20-1-77 and shifted to Railway Hospital, Kota, wherefrom he was shifted to Bombay for better treatment as the condition of the deceased was deteriorating and ultimately the deceased succumbed to his injuries in the hospital at Bombay on 4-2-1977.

4. According to the claimants the deceased at the time of his death was drawing total monthly emoluments to the tune of Rs. 1078-30 p. in the grade of Rs. 500-20-700 EB 25-900 though his basic pay was Rs. 725/- per month; that at that time the deceased who was aged only 39 years had put in service of 19 years and in the near future was likely to be promoted as a Divisional Auditor in the grade of Rs. 840-1200; that the accident occurred while the deceased was on duty in connection with the audit work; that after spending about Rs. 150/- per month for himself the rest of the amount was spent on the family to which extent the family was dependant on him; that there was longevity in the family and that the deceased could have very easily served upto the period of superannuation. The claimants after making the necessary calculations put up a claim for Rs. 2,88,000/-.

5. The respondents in their written statement did not dispute the factum of accident, but they contended that the deceased had no business to accompany Shri Mathur (P. W. 5) on that fateful night and that the accident did not occur because of the rash and negligent driving by the jeep driver. They, therefore, denied their liability. They also denied that the deceased sustained fracture in the said accident though they did not dispute that the deceased died in Bombay on 4-2-77.

6. The learned Member of the Tribunal after considering the evidence and material on record placed by the parties, came to the conclusion that on the fateful day the deceased was travelling in the said jeep with Shri S.P. Mathur at his instance; that the accident occurred because of the rash and negligent driving by the jeep driver Narayan Singh who also died in the said accident; that the cause of death of the deceased was because of the fracture of the pelvis, which he sustained in the said accident and not because of jaundice which he developed after he was admitted into the hospital. He, therefore, after considering the age, income and dependancy of the respondents thought it proper to award a total compensation of Rs. 55,915/- plus costs. Hence this appeal.

7. The claimants have also filed their cross-objections for enhancement of compensation for not awarding any interest and for making deductions of the insurance amount of Rs. 5,000/-, provident fund amount of Rs. 11,000/-, gratuity amount of Rs. 7,000/- as also the amount of monthly pension which the widow of the deceased was entitled to claim till her life time.

8. The learned Counsel for the appellant mainly contended that even though he does not dispute the factum of accident, there is no pleading to the effect that the accident occurred because the jeep driver was drunk. He also submitted that there is no evidence to prove that the accident occurred because of the rash and negligent driving of the jeep by the jeep driver. He, therefore, submitted that even though the jeep driver himself had died in the said accident, the burden lay upon the claimants to prove how the accident occurred and that the sole cause of the accident was the rash and negligent driving of the jeep driver. However, after hearing the learned Counsel, who took us through the evidence we are not persuaded to agree with the submission as the learned Member of the Tribunal has given good reasons for holding that the accident occurred because of the rash and negligent driving of the jeep by the jeep driver.

9. The learned Counsel for the appellant further submitted that even though the deceased had received injuries in the said accident in which he sustained fracture, the claimants have failed to prove that the deceased died as a result, of the injuries sustained in the said accident. According to the learned Counsel it is in the claimants evidence themselves that the deceased developed jaundice which ultimately brought his end. He also submitted that the fracture sustained by the deceased had no direct connection with the ailment of jaundice and consequently even from the medical evidence of P.W. 1 Dr. D.S Mehta, P.W. 7 Dr. Akbar Ali, P.W. 8 Dr. Ashok Gandhi, P.W. 10 Dr. R.C. Sharma as also from the evidence of D.W. 2 Dr. V.K. Chaturvedi and D.W. 3 Dr. Sikrolia it has not been satisfactorily established that the cause of death of the deceased was because of the accident. It no doubt, appears that there is some discrepancy in the medical evidence, but after considering the same we are of opinion that even though the deceased had developed jaundice after he was admitted to the hospital after the incident, it is not suggested that the deceased was already suffering from jaundice nor any questions have been put to the claimant P.W. 3 Smt. Balwant Kaur, the widow of the deceased to that effect.

10. The learned Counsel for the appellant also submitted that the post-mortem report is not placed on record nor the doctor who conducted the post-mortem has been examined. However, in our opinion merely on this ground, we see no valid reason to discard or doubt the medical evidence and material placed on record in that connection. Consequently we see no valid ground to differ from the conclusion reached by the learned Member of the Tribunal on this point.

11. As regards the quantum of compensation, the learned Counsel for the appellant forcefully submitted that it is somewhat heavy though he did not dispute the fact that the claimants are entitled to claim interest and also did not

dispute this fact that in view of the Full Bench Decision reported in 1982 MPLJ 803 : 1983 ACJ, 152 (Kashiram Mathur v. Sardar Rajendra Singh) from the amount of compensation no deductions of insurance amount, provident fund, gratuity and family pension could be made except the ex-gratia payment. Therefore, obviously the learned Member of the Tribunal has committed an illegality in deducting Rs. 5,000/- on account of insurance amount, Rs 11,000/- on account of provident fund and Rs. 7,000/- on account of gratuity, thus totalling to an amount of Rs. 23,100/-. Similarly the learned Member of the Tribunal has committed an illegality in deducting in all Rs. 44,472/- on account of monthly pension which the widow is likely to get during her life time. Thus even though the learned Member of the Tribunal came to the conclusion that considering the dependancy of the claimants as also the age of the deceased, after applying a multiplier of 12 the claimants would have been entitled to claim compensation of Rs. 1,29,600/-, he has committed an error in deducting therefrom Rs 67,472/- and has further committed an error in deducting from the balance amount of Rs. 62,128/- @ of 10% because of lump sum payment on account of uncertainties of life, thereby reducing the claim to a total compensation of Rs. 55,915/-.

12. Therefore, in our opinion, the claimants are entitled to a compensation of Rs. 1,29,600/-. In addition admittedly the deceased suffered from physical and mental pain from 14-1-1977 to 4-2-1977 and, therefore, in view of the Supreme Court decision reported in AIR 1985 SC 106 the claimants are entitled to claim an additional amount of compensation to the tune of Rs. 5000/-.

13. The learned Counsel for the claimant-respondents also submitted that no compensation has been given for medical expenses as also, the journey expenses nor any compensation has been paid in respect of loss of consort and in support of his submission he placed reliance on the decisions reported in 1977 ACJ 134 (Mrs. Manjushri Raha v. B. L. Gupta): 1985 ACJ 271 and 1986 ACJ 46 (Mahipal Co-operative Society Ltd. v. Prabhati) as also at page 269 (Chand Kanwar v. Mannaram). However, after considering these authorities ties we are of opinion that in absence of any satisfactory evidence the learned Member of the Tribunal cannot be said to have committed any illegality in not awarding compensation on this count.

So far as interest is concerned, admittedly the learned member of the Tribunal has not awarded any interest to which the claimants are entitled at the rate of 12% as has been held in the decisions reported in 1985 ACJ 397 and Pushpa Thakur Vs. Union of India (UOI) and Another, . Thus, in our opinion the respondents-claimants are entitled to a total compensation of Rs. 1,34,000/- on which they are entitled to claim interest @ 12% per annum from the date of the filing of the claim petition till the amount is paid to them.

14. In the result the appeal filed by the appellant stands dismissed and the cross-objections filed by the respondent-claimants are allowed to the extent indicated above. It is, therefore, ordered that the appellants shall pay a total compensation

of Rs. 1,34,000/- (One lakh thirty four thousand) plus interest thereon at the rate of Rs. 12% per annum from the date of filing of the claim petition till the amount is paid to them. In case the appellant has already paid the amount to the claimants as per the award, then to that extent the amount so paid shall be deducted by the appellant and the rest of the amount shall be deposited by the appellant with the Tribunal within a period of 4 (four) months from to-day. The amount so deposited shall be kept in fixed deposit in a Nationalised Bank in the name of the Tribunal for a period of 61 (sixty-one) months and the monthly interest accrued thereon shall be paid to respondent No. 1 Smt. Balwant Kaur widow of the deceased for the maintenance of the other minor respondents, who are her children and the principal amount on maturity shall be paid to the respondents jointly in person. However, considering the facts and circumstances of the case, costs of this appeal shall be borne by the respective parties.