

(2003) 04 GAU CK 0015
In the Gauhati High Court
Case No : M.A.C. Appeal No. 46 of 2000

Union of India (UOI)

APPELLANT

Vs

Golendra Moshahari and Others

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(1)

Citation : (2003) 2 ACC 736 : (2005) ACJ 263 : (2003) 3 GLT 199

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : C. Choudhury, C.G.S.C, for the Appellant; Das Roy, for the Respondent

Judgement

P.P. Naolekar, C.J.—Sailendra Moshahari met with an accident on 20.11.1989 when his motor cycle hit with the army vehicle and as a result of the injury sustained he succumbed to the injuries. Brother of Sailendra Moshahari has filed a claim petition before the Motor Accidents Claims Tribunal, Kamrup at Guwahati. After recording the evidence the Tribunal has recorded the finding that the accident took place on account of negligence and careless driving of the driver of the army vehicle; that at the relevant time the deceased was employed as clerk under the United Bank of India, Jowai Branch and was drawing salary of Rs. 1,508.92. The Tribunal further found that when the evidence was recorded before the Tribunal the salary of the deceased would have been Rs. 6,300.58 with usual increments and revision of pay. At the time of the death Sailendra Moshahari was aged about 23 years and was in the service of the bank for 4 months only. Taking the future prospects of the permanent employee the court has held that the gross income can be safely assumed to be Rs. 5,000. Giving deduction of 1/3rd for his personal expenses the Claims Tribunal has found that he must be spending Rs. 3,334 on his dependant and taking into account the age of deceased the Tribunal applied multiplier of 17. The Claims Tribunal has awarded an amount of Rs. 6,86,136 with interest at the rate of 12 per cent per annum with effect from 3.5.1990, i.e., the date of filing of the claim petition. The

compensation amount includes the expenses incurred towards performing the religious rites and meeting the incidental costs.

2. Aggrieved by the award of compensation given by Motor Accidents Claims Tribunal, Kamrup, Guwahati in M.A.C. Case No. 142 of 1990 the present appeal is filed by the Union of India. It is submitted by the counsel for the appellant that it is clear from the statement of Golendra Moshahari, brother of the deceased that he has filed the petition for and on behalf of his father Soniram Moshahari and thus the compensation could have been awarded considering the age of the father and not the age of the deceased as the dependency of his father which has to be compensated. We find substance in the submission made by the learned counsel for the appellant.

3. In *Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai* 1987 ACJ 561 the Apex Court has stated that the expression "legal representative" has not been defined in the Act, However, a legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A (1) expressly states that an application for compensation may be made by the legal representative of the deceased or by their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. It is further stated in para 12 of the judgment that it has been observed that we should remember that in an Indian family brothers, sisters and brothers' children and sometimes the foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855.

4. As per the judgment of the Apex Court it is clear that the compensation can be awarded to the legal representatives and the claim petition can be filed for and on behalf of other legal representatives by one of the legal representatives. In the present case, we do not find any difficulty in regard to filing of the claim petition as the father has already been added as a party in the claim petition and admittedly the father of the deceased Soniram Moshahari is the legal representative of the deceased Sailendra Moshahari.

5. Based on the observations of the Apex Court it is argued by learned counsel for the opposite party that the brother is also entitled for the compensation and the award of compensation made by the Tribunal, taking into consideration the age of the deceased, is just, fair and proper.

6. In the matter of *Smt. Muhini Thakuria and Others Vs. Dhiraj Kalita and Others*, a Division Bench of this court had the occasion to consider the judgment of the Apex Court delivered in *Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai* 1987 ACJ 561 (SC) and observed that in the said case the claim

petition was filed by brothers of a minor child who died in a motor vehicle accident, on the basis that they were the heirs and legal representatives of the deceased. It was held that they could claim compensation as heirs. The court observed that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor accident, there is no justification to deny them compensation. The Division Bench observed that the observation of the Apex Court has to be understood in the background of the facts of the case, which clearly clarified that all the claimants were the heirs of the deceased.

7. It is clear from the judgment of the Division Bench and the facts of the case in the matter of Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), that the Supreme Court has awarded compensation to the brother of the deceased he being the heir and legal representative of the deceased. In the present case the claim petition has been filed by the brother of the deceased on behalf of his father and the father was later on joined as party. The brother is not mentioned in Section 1-A of the Fatal Accidents Act, 1855 nor he is heir of his deceased brother, when the father is alive under the Hindu Succession Act, 1956. When the father is alive the brother has no right to claim property of his deceased brother as heir. Hence, the brother not being the heir the compensation could not have been awarded in his favour individually nor along with his father. The learned Tribunal has committed an error while granting compensation applying multiplier of 17 considering the age of the deceased. The Tribunal has failed to see that brother not being heir is not entitled for compensation. The Tribunal has further failed to see that it is the father alone who was entitled to compensation and while applying the multiplier, it has to take into consideration the years of dependency of the father.

8. The statement of the father, Soniram Moshahari, is recorded in the court. From the statement it appears that at the time of recording the statement of Soniram Moshahari, father of the deceased, was about 67 years. Considering the fact that Tribunal has taken note of the future prospect of the deceased and the age of father, we feel the dependency of the father would continue for five years more taking into consideration the uncertainty of life and thus the compensation, which would be entitled by Soniram Moshahari, would be an amount of Rs. 3,334 x 12 x 5 = Rs. 2,00,040 plus the amount of Rs. 6,000 towards expenses for performing religious rites and incidental expenses as awarded by the Tribunal. The amount of compensation shall also carry an interest at the rate of 12 per cent per annum with effect from 3.5.1990. The appeal is partly allowed and the award is modified to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.