
(1969) 01 MAD CK 0034
In the Madras High Court
Case No : A.A.O. No. 278 of 1964

Union of India (UOI)

APPELLANT

Vs

Varadambal and Others

RESPONDENT

Date of Decision : 31-01-1969

Acts Referred:

Fatal Accidents Act, 1855 — Section 1

Citation : (1969) 01 MAD CK 0034

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : V. Suresham, for the Appellant; Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

Venkataraman, J.—This appeal has been filed by the Union of India represented by the General Officer Commanding, Madras, Mysore and Kerala area, St. Thomas Mount, Madras, against the decision dated 6-1-1964 of the Motor Accidents Claims Tribunal, Madras, awarding compensation of Rs. 12,000/- to the widow and children of one Lakshmanan a hand-cart puller, who sustained fatal injuries as a result of the lorry belonging to the Union of India hitting the handcart. The accident occurred on 2-1-1962 about 4-45 A.M. on the Guindy Adayar Road near Raj Bhavan; The lorry of the Army, known technically as the "weapons carrier", because it was primarily used for carrying weapons, was going from west to east. It struck the hand-cart which was being pulled by Lakshmanan assisted by his brother, Raman, P.W. 3. The cart was then going on the leftside of the road. Injuries were sustained by Lakshmanan and Raman. The injuries of Lakshmanan proved fatal. His widow filed O.P. No. 91 of 1962 on behalf of herself and her minor children. She claimed a sum of Rs. 15,000/- and stated that her husband had been earning Rs. 150/- a month.

2. The claim was resisted by the Union of India on trade grounds. (1) The accident was not due to any rash or negligent act on the part of the driver of the weapons carrier. (2) Even if the accident was due to the rash and negligent

driving of the driver of the vehicle, the Union of India was not liable for the tortious acts of its servants. (3) The amount of compensation claimed was exorbitant.

3. On point (I), what was urged on behalf of the Union of India was that another motor vehicle was coming in the opposite direction from east to west with bright lights. Because of those bright lights, R.W.I, the driver of the weapons carrier, could not see what was in front. He slowed down, but before the vehicle could stop, it hit the hand cart. P. W.3 stated that no lorry was coming in the opposite direction. The Tribunal has not specifically found whether a vehicle was coming opposite with bright lights; but it has proceeded on the footing that even if a vehicle was coming in the opposite direction with bright lights, it was clear that the driver of the weapons carrier was going at such an excessive speed that he could not bring the vehicle to a stop. It, therefore, found that the accident was due to the rash driving of the weapons carrier, though it wrongly calls it "negligent".

4. On point (2), what was urged before the Tribunal was that the Union of India would not be liable for the wrongful acts of its servants committed in the performance of duties in exercise of the sovereign powers of the Union. Here, what was urged on the facts was that the vehicle was going to the Central Station to bring Major Kurup. R.W.I., the driver of the vehicle, gave evidence to that effect. The Union of India has marked an entry in the register, Exhibit-R-1. That, however, did not mention that the weapons carrier was going to the Central Station, but merely mentioned one "residence" as the destination. The clerk who marked the entry could not say anything further. The Tribunal observed:

Assuming that the entry in Exhibit R-1 is proved, it merely shows that on 2-1-1962 at 5 a.m. the lorry proceeded to the residence of somebody. The evidence of R.W.I that he was proceeding to the Central station does not get any indication from this entry. Assuming that R.W.I was taking the military lorry to bring Major Kurup from the Central railway station, I have not been shown that if for picking up a Major a weapons carrier had to be sent to the railway station. As a fact, I am not satisfied that the military vehicle was going on any sovereign purpose and as a matter of law I do not agree with the Respondent's contention that the Government is not vicariously liable for the acts of its driver. I find this point against the Respondent.

On the third point, the Tribunal awarded a compensation of Rs. 12,000/- on some basis which will be explained in due course.

5. Mr. V. Suresham, Learned Counsel appearing for the Union of India is not in a position to canvass the finding of the Tribunal on the first point. Even otherwise, I am satisfied that the finding is correct.

6. On the second point the Tribunal had followed the decision of the Supreme Court in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, . The Learned Counsel submits that that case has been explained in a later decision of the

Supreme Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, In the later case, their Lordships approved of the statement of law by Peacock, C.J. in an earlier case in *Peninsular and Oriental Steam Navigation Company v. The Secretary of State for India* 5 B.H.C.R. 1 to the following effect:

There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them.... Where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them, no action will lie.

Their Lordships then proceeded to observe:

Thus, it is clear that this case recognises a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is: was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State of such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course-of his employment is, in this category of case, an act of a servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts committed by public servants. That is why the clarity and precision with which this distinction was emphasised by Chief Justice Peacock as early as in 1861 has been recognised as a classic statement on this subject.

It may be mentioned that in the earlier case in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, , the jeep which caused the accident was being driven to the Collector's residence. It was held that the Union of India was liable. In the later case, a head-constable took away gold which had been seized from a partner of the Plaintiff firm in the exercise of powers of search under the Code of Criminal Procedure on suspicion that the gold was illicit. It was held that the act of seizure was in the exercise of sovereign power, and consequently the Union was not liable for the tort committed by the head constable in the course of his employment arising out of the act of seizure.

7. Applying the principle stated above to this case, it is clear that the Union has

not made out its claim for immunity. In the first place, the available evidence is discrepant. While the driver of the vehicle R.W.I states that he was going to the Central Station to bring Major Kurup. the register Exhibit R-I reads as though it was going to some residence, where, it is not stated. It w"s the duty of the Union within whose knowledge the matter lay to clear up the discrepancy. The Court is thus left in a state of doubt as to the purpose for which the vehicle was engaged. Further, even assuming that it was going to the Central Station, we cannot straightaway hold that it was in connection with the function of the Union as a sovereign power. There are ever so many possibilities. It may be that Major Kurup had gone even on a private visit somewhere and was returning back to the Central Station. For want of proof of the facts, I must affirm this finding of the Tribunal that the Union has not made out the claim for immunity.

8. This brings us to the last contention of the Learned Counsel that the quantum of compensation is excessive. In the petition it is stated that the deceased was earning about 150/- a month. His widow as P.W. 1 has stated that "he will earn Rs. 8, 5, 4 or 6 per day." P.W. 2 is the agent of Rama Rao and Company which was lending out carts to persons like the deceased on hire. P.W. 2's evidence is that out of the earnings, the person who takes the cart for hire has to pay two annas in the rupee. He says that the deceased will earn Rs. 5, 7 or 8 per day and that the company would take two annas per rupee as cart hire. P. W. 3 Bays that he will earn Rs. 170/- or Rs. 180/- per month. The Tribunal after setting out the evidence observes as follows:

There is no evidence contra. It is not unlikely that a hand cart puller earned Rs. 150/- per month. The age of the deceased is given in the petition as 35 years. There is no dispute that Lakshmanan died as a result of the lorry accident. In this case, there is nothing to show that apart from the loss to the estate of the deceased the claimants have lost any pecuniary benefit. The damages which the Petitioners will be entitled to will be only the loss to the estate of the deceased plus some compensation for pain and suffering. In view of the age of the deceased having been 35, it is not unlikely that he would have earned for about 20 years or more. But at the same time, the expenses which the deceased might have been incurring for his comforts and food has also got to be deducted. It appears to me that after deducting such expenses the deceased would have Rs. 75/- for the up-keep of his family. It would represent his savings at the rate of Rs. 75/- per month. Per year, his earning which represents the expenditure of his family will be Rs. 900/- , For about 20 years the amount will be Rs. 18000/- The earning of the deceased was per day and the amount of compensation must be taken to be such a figure which will contribute about Rs. 75/- month for about twenty years. I am of opinion that Rs. 12,000/- will be adequate compensation for the loss to the estate which will include Rs. 500/- for pain and suffering.

9. In Municipal Corporation of Delhi Vs. Subhagwanti and Others, , their Lordships laid down the principle on which compensation has to be paid in such cases to the legal representatives of the deceased under the provisions of

Section 1 of the Fatal Accidents Act, 1855. Their Lordships quote the classical passage of Lord Wright in *Danes v. Powell Duffryn Associated Collieries Ltd.* 1942 A.C. 601 in the corresponding provisions of the English Fatal Accidents Acts, thus:

It is a hard matter of pounds, shillings, and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

The same principle has been reiterated by Viscount Simon in *Nance v. British Columbia Electric Railway Company Ltd.* 1951 A.C. 601 In the Supreme Court case, three persons were killed as a result of the collapse of the clock tower. The Delhi Corporation was held liable. The first victim Ram Parkash was thirty years old at the time of the accident; his widow being aged 28 and his son 14 and daughters 12 and 2 years old. The High Court considered that the widow and the children might have been receiving at least a sum of Rs. 150/- per month for their subsistence and for the education of the children, from the deceased. The income was capitalised for a period of fifteen years and the amount of Rs. 27,000/- which was arrived at was more than what the trial Court had awarded, namely, Rs. 25,000/- . The High Court, therefore, did not reduce the damages. Their Lordships stated that the High Court had applied the correct principle in estimating the damages in all the three appeals.

10. Mr. Vasudevan, Learned Counsel for the Respondents has cited the decision of a Bench of the Bombay High Court in *Union of India Vs. Sugrabai and Others*, . The Bench following the Supreme Court and on the facts of that case, awarded a compensation of Rs. 30,000/- where the monthly income of the deceased was Rs. 150/- per month and he also got presents of clothes to the extent of Rs. 500/- per year. He was aged about 31 years. He was employed as a clerk doing miscellaneous jobs and was expected to earn further increments.

11. As against this, Mr. Suresham, Learned Counsel for the Appellant contends that the Tribunal was wrong in assuming that the deceased would get employment on all the 30 days in a month and that even if it assumed the average earnings of the deceased to be Rs. 150/- a month, the compensation may be fixed on the scale laid down in Schedule JV of the Workmen's Compensation Act, 1923. For monthly wages of a workman between Rs. 150/- and Rs. 200/- in the event of death, the amount of compensation is stated as Rs. 7,000/- . I am, however, disinclined to accept that scale because it does not make any allowance for the age of the deceased workman-the same would be the compensation whether he died at the age of 35 or 55 whereas it is clear that

greater compensation should be paid to the legal representatives where the man dies at 35 than if he dies say at 55. The criterion laid down by their Lordships of the Supreme Court in *Municipal Corporation of Delhi v. Subhagwanti* 1966 A.C.J. 57 should, in my opinion, govern this case.

12. Speaking for myself, I think that the average monthly income of the "deceased assessed at Rs. 150/- is slightly excessive, and it may be nearer Rs 130/- , because allowance will have to be made for two annas in the rupee as cart hire and also for the possibility of the deceased not being quite fit for all the thirty days in the-month. Out of the earnings of Rs. 130/- a month, he would have provided Rs. 65/- per month or Rs. 780/- per year to the family. In the Supreme Court case the deceased was aged 30 years and 15 years[^] income was capitalised. Here, the deceased was aged 35 years and perhaps a correct multiplier would be 14 years. This would result in $14 \times 780 = 10920/-$. But another principle in such cases is that the appellate Court should not interfere merely because its own estimation happens to differ slightly from that of the trial Court. In this view of the matter, I do not think it will be right for me to reduce the sum of Rs. 12,000/- awarded by the Tribunal. The appeal is accordingly dismissed, but without costs

13. Mr. Vasudevan brings to my notice that out of the sum of Rs. 12,000/- the widow has been permitted to draw a sum of Rs. 3000/- without security. He prays for a direction to withdraw the entire balance. But since there may be an appeal, I think it right to allow the widow to draw for herself and her children only a further sum of Rs. 4500/- without any security. After the expiry of the time for appeal, she may apply for permission to draw the balance after giving notice to the Appellant herein.