

(1995) 04 AHC CK 0013
In the Allahabad High Court
Case No : F.A.F.O. No. 806 of 1983

U.P. State Road Transport Corporation	Vs	APPELLANT
Gopi Chand and Another		RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Citation : (1995) ACJ 1247

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—This appeal is directed against the judgment and decree (award) dated 27.4.1983 passed by Motor Accidents Claims Tribunal (VIII Additional District Judge), Allahabad, in Motor Accident Claim Case No. 166 of 1979 between Gopi Chand, claimant and U.P. State Road Trans. Corporation and Anr., opposite parties.

2. The claim, the petitioner filed before the Motor Accidents Claims Tribunal, arose out of a motor accident which occurred on 10.7.1978. The deceased Ashok Kumar was a boy of 13 years of age and student of VIth standard at the time of accident. The father of the deceased was engaged in purchase and sale of food-grains both by way of pheri (hawk) as well as through a shop at his residence and had an income of Rs. 300/- per month. He claimed Rs. 1,00,000/- by way of compensation for the death of his son Ashok Kumar as a result of injuries sustained by him in the accident arising out of use of motor vehicle belonging to the appellant. It was also alleged in the claim petition that the deceased was earning Rs. 200/- per month and was helping his father in maintaining the household expenditure. The claim petition was contested by the appellant, inter alia, on the ground that the accident occurred due to negligence of the deceased inasmuch as, as soon as the U.P.S.R.T.C. bus No. UPZ 8106 driven by B.D. Misra

and conducted by Prem Chandra Srivastava was about to reach Babuganj, a truck came from Phoolpur side and crossed the bus and in the mean time the deceased while crossing the road in a hurry from behind the truck was dashed by the rear left wheel of the bus and thereby sustained injuries for no fault of the driver of the bus who was driving very slowly and not in a high speed.

3. Upon consideration of the evidence adduced in the case, the Motor Accidents Claims Tribunal found that the claimant succeeded in proving that the accident was caused due to rash and negligent driving of the bus by its driver. Tribunal found that the deceased had no independent income of his own, although he might have been helping his father in conducting the business, but upon evidence that the father was earning about Rs. 300/- per month, the Tribunal presumed that the deceased would have also earned Rs. 300 per month after attaining the age of majority. The Tribunal held that the deceased would have spent at least Rs. 150/- per month on his own person and out of remaining Rs. 150/- he would have spent Rs. 100/- upon his parents and Rs. 50/- would have been saved by him for his estate. The Tribunal believed the claimant's case that the deceased was 13 years of age at the time of accident and taking the life expectancy of 65 years, the Tribunal fixed 42 years as earning span of life after attaining the age of majority. It is on these findings that the Tribunal calculated the amount of compensation at Rs. 150/- x 12 x 42 = Rs. 75,600/-. But after giving 20 per cent discount towards uncertainties of life and 15 per cent on account of lump sum payment, the Tribunal worked out the compensation at Rs. 49,200/-. To this amount the Tribunal added Rs. 10,000/- for father and mother each as compensation for loss of love and affection and for mental shock and awarded compensation of Rs. 69,200/- which the Tribunal considered to be reasonable.

4. Mr. Samir Sharma, learned counsel for the appellant, assailed the judgment and decree of the Tribunal mainly on the ground that having regard to the facts and circumstances of the case, particularly the age of the deceased and his family background, the compensation awarded by the Tribunal was unjustly excessive. He placed reliance on certain authorities including Division Bench decision of this court in Rashid Hussain v. Union of India 1994 (2) TAG 413 and single Judge decision of Andhra Pradesh High Court in Andhra Pradesh State Road Trans. Corporation v. G. Ramanaiah 1988 ACJ 223 (AP), in support of his contention that having regard to the age of the deceased total amount of compensation ought not to have been allowed beyond Rs. 20,000/-. The learned counsel for claimant-respondent, on the other hand, urged that the amount of compensation awarded by the Tribunal cannot be regarded as excessive or at least unjustly excessive. He placed reliance on a Division Bench decision of the Gujarat High Court in Mangaldas Mohanlal Patel and Another Vs. Union of India and Another, , where the deceased was a young boy of 13 years of age studying in a school and not earning anything but the High Court assessed the compensation at Rs. 54,000/- as against Rs. 21,000/- awarded by the Tribunal. Although the Tribunal's award was enhanced by Rs. 10,000/-, because the

appeal was restricted only up to that amount. It was also urged by the learned counsel for the claimant-respondent that the life expectancy was taken by the Tribunal on the lower side and also that there was no justification for making discount on account of lump sum payment and, therefore, taking all these things into consideration, it cannot be said that the amount of compensation was in any manner unjustly excessive.

5. Having given my anxious consideration to the submissions made at the Bar, I am of the considered view that the appeal lacks merit and is, therefore, liable to be dismissed. The Tribunal has examined each and every aspect of the matter in a correct perspective and the amount of compensation awarded by it cannot in any manner be regarded as unjustly excessive. It is well settled that although the appellate powers are co-extensive with those of the Tribunal, but the appellate court has to give due weightage to the conclusions arrived at by the Tribunal on a proper self-direction to the facts and circumstances of the case. A perusal of the judgment under challenge would indicate that the Tribunal has properly self-directed itself to the relevant factors and worked out the compensation by applying a proper method. It is true that where a young boy studying in a school and not earning anything dies as a result of injuries sustained in an accident arising out of use of the motor vehicle, it is difficult to evaluate his future earning capacity and loss to the claimant, but the court has to assess the value of the lost dependency as also the value of the prospective chance or probability by taking relevant factors into account as has been done in the present case.

6. In the facts and circumstances of the case as found by the Claims Tribunal, compensation of Rs. 69,200/- awarded to the parents of the deceased boy aged about 13 years cannot be regarded as excessive and in no case unjustly excessive. The judgment of the Tribunal does not suffer from any perversity. The finding of the Tribunal on the question of negligence and its other findings having not been seriously assailed, I find no case made out for interference in exercise of appellate power.

7. In the result, the appeal fails and is dismissed. The interim order dated 17.11.1983 stands discharged.