
(1971) 08 PAT CK 0015

In the Patna High Court

Case No : Appeal from Original Order No's. 203 and 215 of 1963

Vulcan Insurance Co. Ltd. and Another

APPELLANT

Vs

Kongasari Lal Banerji and Another

RESPONDENT

Date of Decision : 03-08-1971

Acts Referred:

Citation : (1972) ACJ 208 : (1972) 42 CompCas 261

Hon'ble Judges : Shambu Prasad Singh, J;S.P. Sinha, J

Bench : Division Bench

Advocate : S.K. Sarkar, in M.A. No. 203 of 1963 and Samptami Jha, in M.A. No. 215 of 1968, for the Appellant; Saptami Jha and Sushil Kumar Mazumdar for the respondents in M.A. No. 203 of 1968 and S.K. Sarkar and Sushil Kumar Mazumdar for the respondents in M.A. No. 215 of 1968, for the Respondent

Final Decision : Partly Allowed

Judgement

1. These two appeals are directed against an award of a claims tribunal constituted u/s 110 of the Motor Vehicles Act, 1939. The accident for which compensation has been awarded was by bus No. BRR 800. Miscellaneous Appeal No. 203 of 1968 is by the insurer and Miscellaneous Appeal No. 215 of 1968 is by the owner of the bus. They have been heard together, as they arise out of the same order, and are being disposed of by this judgment.

2. On 4th July, 1962, at about 10,30 a.m., Parbati Kumar Banerjee, a school teacher of the Jharia Raj School at Jharia, and his mother (A.W. 3) were standing at the place used as bus-stand near Dhanbad Railway Station. According to the claimant, the father of Parbati Kumar Banerjee, the aforesaid bus came there at high speed and crushed Parbati Kumar Banerjee in between that bus and another bus which was standing at the bus-stand from before. A.W.3 also received injuries. Parbati Kumar Banerjee was taken to the hospital at Dhanbad, but he died there. As stated earlier, the claim application was made by the father (A.W. 8) which is for his benefit as well as for that of the mother of the deceased (A.W. 3).

3. The case of the appellants was that there was no negligence on the part of the driver. A.W. 3 was there from before when the bus came at that place and she received minor injuries. The deceased, Parbati Kumar Banerjee, suddenly rushed to help her and in that process received the injury.

4. The claims tribunal has held that there was negligence on the part of the driver of the bus, and, as such, the owner and insurer are liable to pay compensation. It has fixed the compensation at Rs. 24,000 but of which Rs. 20,000 is to be paid by the insurer and Rs. 4,000 by the owner.

5. Mr. S.K. Sarkar, appearing in Miscellaneous Appeal No. 203 of 1968, and Mr. Saptami Jha in the other appeal for the appellants have contended that the finding of the claims tribunal that there was negligence on the part of the driver is not correct. On the materials on the record, however, we are satisfied that the finding is correct. No witness was examined on their behalf to prove that the deceased suddenly came near the bus after his mother received injuries and in that process he himself was injured ; rather this suggestion was put to A.W. 3 and she expressly denied it. The station diary lodged by the driver was marked exhibit 1 in the case, and that no doubt supported the case of the appellants, but as the driver has not been examined in the case by either party, his statement in that entry cannot be taken into evidence. The driver was interested in making such a statement, and we are not satisfied that whatever he stated in the station entry was true. We accordingly hold, in agreement with the claims tribunal, that there was negligence on the part of the driver and the appellants are liable to pay the compensation for the accident.

6. Learned counsel for the appellants have next challenged the quantum of compensation fixed by the claims tribunal. Evidence was led on behalf of the claimant that the deceased was drawing a salary of Rs. 114 from the school as a teacher. The evidence, however, showed that he was actually drawing Rs. 99 per month, and he was entitled to draw a further sum of Rs. 15. The claims tribunal has, therefore, fixed the amount which the deceased was getting per month from the school for his work as teacher at Rs. 99 per month, and that finding has not been challenged before us by the learned counsel for either party. Evidence was also led before the claims tribunal on behalf of the claimant that the deceased used to earn Rs. 300 per month from private tuition. Three students were examined as A.Ws. 5, 6 and 7, and in their evidence they have said that the deceased was their private tutor. They used to read in batches of ten. The students of one batch used to pay Rs. 20 each per month, whereas the students of the other batch used to pay Rs. 15 each per month. The claims tribunal has assessed the income of the deceased from the tuition at Rs. 150 per month. A. W. 5 is a college student, and, according to him, even students of the college at Jharia used to read from the deceased who was working as a demonstrator in the school. Learned counsel for the appellants have contended that it is not likely that college students would employ the deceased as tutor. Even if the evidence of A. W. 5 is doubted, yet on the evidence of A. Ws. 6 and 7 it is established that

the deceased used to get Rs. 150 per month as tuition fees from the school students and, in the circumstances, the amount of Rs. 150 assessed as income of the deceased from private tuition cannot be held to be unreasonable.

7. The claims tribunal in determining the amount of compensation has thought that the parents of the deceased were likely to live for ten years more and calculated the amount of compensation for that period. It cannot be said to have erred in that respect inasmuch as the accident took place in the year 1962, and, in the year 1971, the parents are still living. The tribunal has deducted Rs. 50 out of the monthly income of the deceased, as in its opinion that amount the deceased must have been spending on himself. In our opinion, the tribunal should have reduced some more amount. The deceased was unmarried, and, in all probability, he would have married after some time. After the marriage, he must have spent some amount on his wife and that has to be taken into consideration in fixing the amount of compensation. In our opinion, out of the income of Rs. 249 or Rs. 250 per month, he would have spent a sum of Rs. 75 per month on his wife. So, that amount should also be deducted from the monthly income of the deceased which he was earning at the time of the accident in fixing the amount of compensation. Deducting about Rs. 124 or Rs. 125 from Rs. 249 the monthly income of the deceased would be Rs. 125 per month, and compensation on that basis for ten years will be Rs. 15,000 (fifteen thousand) only. The claimant is entitled to that amount as compensation and not to Rs. 24,000 as assessed by the claims tribunal. It is settled law that in fixing the amount for compensation in such cases courts have to conjecture. In England, in fixing the compensation for widows, the fact whether they were likely to re-marry or not has always been taken into consideration. The English principle that conjecture to some extent is inevitable in such cases has also been approved by the Supreme Court in many of its decisions. We may refer only to a recent decision of the Supreme Court in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, .

8. Before closing our judgment, it is necessary to refer to another argument advanced by learned counsel for the appellants, namely, that in this case there was no evidence as to what amount from the income of the deceased the parents used to get. It has been contended by the learned counsel for the appellants that, in the circumstances, no compensation at all should be allowed to the appellants. As observed earlier, in fixing the compensation conjecture on the part of courts to some extent is inevitable. It is not in dispute that the deceased was unmarried at the time of the accident, and his parents are of old age. He being a member of the Hindu joint family, it can easily be conjectured that whatever amount he would have been saving from his income after his personal expenditure, he must have been paying it to his parents. In our opinion, therefore, there is no substance in this contention of learned counsel for the appellants.

9. It has also been contended before us that, as the entire amount of

compensation is to be paid in one lump sum, there should be some reduction on that score. Such reduction is made in appropriate cases. In this case, however, we are not inclined to reduce the amount on that score as, in our opinion, the tribunal should not have calculated the compensation on the basis that the parents were likely to live for ten years only.

10. In the result, both the appeals succeed in part and the award of the claims tribunal is modified to the extent indicated above, that is, the amount of compensation is reduced from Rs. 24,000 to Rs. 15,000. The entire sum is now payable by the insurer. In view of the partial success of the appeals, the parties shall bear their own costs so far as this court is concerned.