
(2002) 04 RAJ CK 0122

Rajasthan High Court

Case No: Civil Miscellaneous Appeal No. 408 of 1993

Hanja Bai and Others

APPELLANT

Vs

Sesa Ram and Others

RESPONDENT

Date of Decision: April 10, 2002

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2003) 2 WLC 674 : (2003) 2 WLN 435

Hon'ble Judges: H.R. Panwar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

H.R. Panwar, J.

This appeal is directed against the judgment and award dated 10.12.1992 passed by learned Motor Accident Claims Tribunal, Bali (hereinafter referred to as "the Tribunal") whereby the Tribunal awarded compensation of Rs. 28,000/- in favour of appellant claimants (for short "the claimants" hereinafter referred to) and against respondents. Being aggrieved and feeling dissatisfied with the quantum of compensation, the claimants have preferred this appeal.

2. Briefly stated facts to the extent they are relevant and necessary for decision of this appeal are that on 5.5.1990 at about 2.30 P.M. Rata Ram was proceeding on bicycle from Bali to Shrisela. When he reached near Officer's Colony, Bali and was opposite to newly constructed Krashi Mandi, at that relevant time a jeep bearing No. RRT 6098 came from behind, which was driven by respondent No. 1 Sesa Ram at great speed, rashly and negligently, hit the bicycle of Rata Ram, due to which Rata Ram fell down on "Kachi Patari" (Bypath) of the Road and sustained severe head injury. Rata Ram succumbed to the injury. The said jeep was owned by respondent No. 2 Phool Chand and was under valid insurance with respondent No. 3 United India Insurance Company Limited

(hereinafter referred to as "the Insurance Company"). The claimants (appellants herein) filed a claim petition before the Tribunal for compensation u/s 166 of the Motor Vehicles Act, 1988 (for short "the Act") claiming compensation for a sum of Rs. 2,82,972/-. By judgment and award impugned, the Tribunal held deceased Rata Ram contributory negligent to the extent of 65% and the jeep driver respondent No. 1 Sesa Ram negligent to the extent of 35% and accordingly awarded compensation of Rs. 28,000/- in favour of the claimants.

3. I have heard learned Counsel for the parties. Perused the judgment and award impugned and also scanned, scrutinised and evaluated the evidence produced by the parties.

4. In the claim petition, the claimants specifically pleaded that deceased Rata Ram was hit from behind by the said jeep, which was driven at a great speed, rashly and negligently by its driver respondent No. 1 Sesa Ram on 5.5.1990 at about 2.30 P.M. At the relevant time of the accident, the jeep involved in the accident plying on the said road has not been disputed. The respondents did not dispute death of Rata Ram due to head injury sustained by him. The only dispute raised by the respondents is that the deceased lost balance of his bicycle and fell down on the road. Report of this occurrence was promptly lodged with the Police Station Bali. The police promptly investigated the matter and recorded the statements of eye witnesses Jeva Ram Exhibit 17, Jalam Singh Exhibit 18 and Bahadur Puri Exhibit 19. Autopsy on dead body of Rata Ram was conducted vide Exhibit A-9, wherein Medical Jurist opined that cause of death is head injury. A charge-sheet was filed against the driver of the said jeep respondent No. 1 by the police for the offences under Sections 279 & 304-A, IPC. Before the Tribunal, the claimants produced AW-1 Hanja Bai, AW-2 Jeva Ram and AW-3 Jalam Singh. Respondent No. 1 Sesa Ram was examined as NAW-1. AW-1 Hanja Bai, wife of the deceased deposed before the Tribunal that her husband Rata Ram was an employee of Rajasthan State electricity Board (R.S.E.B.) and his monthly salary was Rs. 1500-1600/-. She further deposed that her husband died due to the accident caused by the jeep and the claimants were dependent on the income of the deceased.

5. While deciding issue No. 1, the Tribunal held that the deceased himself was negligent to the extent of 65% and the jeep driver respondent No. 1 was negligent to the extent of 35%. Issue No. 1 reads as under:

Whether on 5.5.1990 Rata Ram was hit by jeep No. RRT 6098, driven by respondent No. 1 at a great speed, rashly and negligently, due to which Rata Ram died?

6. Burden to prove this issue was on the claimants. The claimants produced two eye witnesses of the occurrence AW-3 Jalam Singh and AW-2 Jeva Ram. AW-3 Jalam Singh, at the relevant time of the accident was occupant of the said jeep and was sitting on left front seat of the jeep. He deposed before the Tribunal that deceased Rata Ram was proceeding on the bicycle ahead of the said jeep on the extreme left side of the road.

AW-3 Jalam Singh deposed on oath before the Tribunal that when the deceased Rata Ram was near Officers' Colony on a cycle and was going ahead of the jeep he was hit by the said jeep driven by respondent No. 1 at great speed, rashly and negligently. Due to this accident the cyclist was thrown away on the ground. He and other occupants of the jeep asked the jeep driver to stop the jeep and thereafter the said jeep was stopped, after covering distance of 10 feet. The cyclist sustained injuries. Thereafter he came to know that the cyclist was Rata Ram. The injured was taken in the very same jeep to hospital. He further stated that he was sitting on left front seat of the jeep and the cyclist was ahead of mud guard of the jeep. He along with Bahadur Puri and Jeva Ram took the injured person to the hospital. The injured became unconscious soon after the accident. He clearly deposed that the said accident was caused due to negligence of the jeep driver. The bicycle was damaged in the said accident. Statement of this witness was recorded by the police on the very day of the accident vide Exhibit 18. Presence of this witness has not been disputed by the respondents. AW-2 Jeva Ram was also occupant of the said jeep and was sitting on the rear seat of the jeep on the right side (driver's side). His statement Exhibit A-17 was recorded by the police on the very day of the accident, wherein he categorically stated that while the jeep was plying near the Officer's Colony, Bali, and was near Krashi Mandi, a cyclist was proceeding ahead of the jeep towards Shrisela. The jeep came from behind, which was driven by respondent No. 1 Sesa Ram at great speed, rashly and negligently hit the cyclist, due to which the cyclist fell down. After hitting the cyclist, the jeep was stopped after covering a distance of 10 feet. He along with other persons took the deceased in the very jeep to the hospital. When he was examined in Court on 25.7.1992, he in clear terms admitted that he had made statement to the police Exhibit 17. He also stated that he was going in the said jeep from Bali to Falana, which was driven by respondent No. 1 Sesa Ram. He stated that a bullock cart came from opposite direction and at that relevant time, deceased Rata Ram was proceeding towards Shrisela ahead of the jeep and all the three i.e. cyclist, jeep and bullock cart were parallel to each other. At that relevant time the cyclist was on extreme left side of the road and the jeep hit the cyclist, due to which the cyclist fell down and sustained severe injury on head and on other parts of the body. He further admitted that he was sitting on rear right side seat of the jeep. AW-3 Jalam Singh specifically stated that AW-2 Jeva Ram was sitting on rear seat on the right side of the jeep. The jeep was stopped after covering some distance and Rata Ram was taken to the hospital. He admitted the presence of Bahadur Puri. Statement of Bahadur Puri is on record as Exhibit 19. He further stated that at the relevant time, the jeep was carrying 8 to 10 passengers. As against the claimant's evidence NAW-1 Sesa Ram driver of the jeep was examined. He stated that Rata Ram was proceeding on bicycle having a radio in his hand. He took Rata Ram to hospital on asking of the passengers of the jeep. He stated that accident to Rata Ram was not caused by his jeep. He admitted that for this accident after investigation police filed challan against him in the Court. He did not dispute the presence of two eye witnesses AW-2 Jeva Ram and AW-3 Jalam Singh. He categorically stated that he had no enmity with the occupants of the jeep more particularly AW-2 Jeva Ram and AW -3 Jalam Singh. He stated that Rata Ram was taken to the hospital in his jeep

and at that time heavy blood was coming out of his head. Exhibit A-3 site map was prepared by the police soon after the accident, wherein Rata Ram was shown to have been hit by the said jeep at place mark "A" due to which he fell down. Site map Exhibit A-3 was prepared on the basis of the statement of AW-2 Jeva Ram recorded by the police. Exhibit A-4 site inspection memo also shows that the road was having width of 8 feet and 4 feet wide path (patti of concrete) on both sides of the road. Mark "A" is shown to be the place where Rata Ram was hit from behind by the driver of jeep No. RRT 6098.

7. I have carefully gone through the judgment and award impugned, more particularly with regard to the finding on issue No. 1.

8. On reading of the judgment of the Tribunal, it reveals that the learned Tribunal failed to scrutinise the evidence. On the contrary, the finding of the Tribunal is based on surmises and conjectures. At one place, the learned Tribunal observed that it appears from the statement of AW-2 Jeva Ram that there was no accident. On other place, learned Tribunal observed that if for the sake of argument statement of AW-3 Jalam Singh is taken to be totally true then also from his statement it appears that on the road on which accident took place, through out the day vehicles were passing and if the accident took place, then, handle of the bicycle would have been hit. It was further observed by the learned Tribunal that it appears that Rata Ram was going on bicycle on correct side of the road and when the jeep over took him, he fell down because of vibration of the jeep and sustained injuries. On these facts, the learned Tribunal held that the jeep driver was negligent. It was also cursorily held that in comparison to the cyclist, negligence of the driver of the jeep was very less. From the statements of the claimants' eye witnesses AW-2 Jeva Ram and AW-3 Jalam Singh and also various documents exhibited as noticed above, the only conclusion which can be arrived at is that deceased Rata Ram was proceeding on his bicycle on extreme left side of the road and jeep No. RRT 6098, which was driven at great speed, rashly and negligently, hit the bicycle from behind and for this accident driver of the jeep respondent No. 1 Sesa Ram is alone responsible.

9. In this view of the matter, I am of the considered opinion that the Tribunal fell in error in holding deceased contributory negligent to the extent of 65%. Thus, the finding of the Tribunal holding deceased negligent cannot be sustained and is set aside to that extent. Accordingly, finding on issue No. 1 is modified and I hold respondent No. 1 Sesa Ram solely negligent and responsible for the said accident.

10. So far as finding on issue No. 2, which relates to assessment of quantum of compensation is concerned, from plain reading of the judgment and award impugned, it is clear that the learned Tribunal did not follow the settled principle of law governing computation of compensation. It is evident from the fact that the Tribunal failed to take into account future prospects of the deceased as also further erred in deducting pension amount @ Rs. 700/- per month on the ground that pension @ Rs. 700/- per month likely to be paid to the wife of the deceased. From the statement of AW-1 Hanja Bai and salary certificate Exhibit A-20 issued by the employer RSEB, it is clear that on the relevant date

of the accident, deceased Rata Ram was 49 years of age and his monthly income from salary was Rs. 1509/-. The date of birth of the deceased as per record is 23.9.1941. The Tribunal determined monthly dependency of the claimants @ Rs. 300/- per month and computed loss of income to Rs. 72,000/- and added a sum of Rs. 8,000/- under the heads consortium, loss of love and affection, funeral expenses etc. Thus, the total amount computed to Rs. 80,000/- out of the amount computed 65% amount was reduced on the ground of contributory negligency of the deceased and award meagre sum of Rs. 28,000/- in favour of the claimants. It is settled law that in appeal the quantum is interfered if the compensation awarded is too low or too excessive, as the case may be. Obviously, in the instant case, the deceased was 49 years of age having stable job and an award of Rs. 28,000/- made by the Tribunal is shockingly too low. Therefore, it is in the fitness of things to make proper computation of the compensation payable to the claimants.

11. In [General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others](#), the Hon"ble Supreme Court held that the multiplier method is logically sound and legally well established for computing the proper compensation. It has further been held that choice of multiplier is determined by the age of the deceased or of the claimants whichever is higher. It was further held by their Lordships that deduction towards uncertainties of the future life and immediate lump sum payment is not permissible. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. It was further held that it must be borne in mind that the multiplier method is the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. Hon"ble Supreme Court reiterated this view in [U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others](#), wherein the Apex Court held that the multiplier cannot exceed 18 years purchase factor, which was overall improvement from the earlier judgment in the case of General Manager Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (supra). Their Lordships further held that future prospects and advancement in life and career should also be sounded in terms of money to augment the multiplicand.

12. While computing the compensation the Tribunal considered the fact that wife of the deceased is entitled for pension @ Rs. 700/- per month and deducted this amount from the monthly dependency. Hon"ble Supreme Court in [N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another](#), held that there is no justification for deduction of the amount payable on account of monetary benefit of pension payable to the claimant while computing the compensation.

13. In [Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another](#), similar question came up for consideration before Hon"ble Supreme Court. Their Lordships observed that the family pension is also earned by an employee for the

benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death and there is no correlation between the two. Their Lordships further held that such amount cannot come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. Their Lordships further held that deceased contributes his own money for which he receives the amount and it has no correlation to the compensation computed as against tortfeasor for his negligence on account of accident. The amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, how can fruits of an amount received through contributions of the deceased be deducted out of the amount receivable under the Motor Vehicle Act.

14. Thus, in my considered opinion, the Tribunal was not justified in deducting a sum of Rs. 700/- per month from the monthly dependency of the claimants while computing the compensation.

15. In *General Manager Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (supra) Hon^{ble} Supreme Court has held that of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. In that case the monthly income of deceased was Rs. 1032/- and having regard to future prospects and advancement in life and career, monthly income was assessed @ Rs. 2000/- as the gross income and after deducting one-third of the gross income towards personal living expenses and treating the balance as the amount likely to have been spent on the members of the family and the dependents, Rs. 1400/- per month was taken as dependency. Their Lordships further awarded a sum of Rs. 15,000/- each for loss of consortium and loss of the estate.

16. Thus, from the law propounded by the Hon^{ble} Supreme Court, it is clear that while making computation of compensation future prospects of the deceased should also be sounded in terms of money to augment the multiplicand. Applying the ratio of aforementioned judgments of the Hon^{ble} Supreme Court in the present case the income of deceased Rata Ram can safely be taken to be Rs. 2300/-. After deducting therefrom Rs. 800/- per month towards the personal living expenses of the deceased, monthly dependency comes to Rs. 1,500/-. This amount needs to be multiplied by appropriate multiplier applicable to the age group of the deceased.

17. In *U.P. State Road Transport Corporation and Ors. v. Triolk Chand and Ors.*, (supra) Hon^{ble} Supreme Court held that the multiplier cannot exceed 18 years' purchase factor.

18. Second schedule of Section 163-A of the Act, which can be used as guideline for selection of multiplier in respect of fatal accident cases which provides the multiplier of 13 years purchase factor for the death of a person in the age group of above 45 years but not exceeding 50 years. Thus, in the instant case, the appropriate multiplier is 13 years purchase factor. Thus, compensation works out to Rs. 1500 x 12 x 13 = Rs. 2,34,000/-.

To this a conventional sum of Rs. 15,000/- each for loss of consortium and loss of the estate should be added. Thus, total compensation works out to Rs. 2,64,000/- to which the claimants are entitled with interest @ 9% p.a. from the date of claim application.

19. In [Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others](#), the Hon"ble Supreme Court held that earlier 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year.

20. In view of the aforesaid discussion, this appeal succeeds and is allowed and the compensation is enhanced to Rs. 2,64,000/-. This amount shall carry interest @ 9% per annum from the date of application till realisation. Out of total compensation Smt. Hanja Bai shall be paid a sum of Rs. 1,50,000/- and interest thereon and other appellants No. 2 and 3 namely Chena and Sava Ram be paid Rs. 35,000/- each and appellant No. 4 namely Sarso be paid Rs. 44,000/-. Respondent Insurance Company to pay above amount to the claimants by depositing it in the Tribunal. Once such deposit is made, the same shall be disbursed to the claimants in aforesaid proportionate in view of the principles laid down by Hon"ble Supreme Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, (supra). No order as to costs.