

(1990) 12 MP CK 0013
Madhya Pradesh High Court
Case No: M.A. No. 197 of 1981

Shyama and Another

APPELLANT

Vs

Radhyeshyam and Others

RESPONDENT

Date of Decision: Dec. 4, 1990

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110A, 110B

Citation: (1992) ACJ 863

Hon'ble Judges: A.G. Qureshi, J

Bench: Single Bench

Advocate: Siddiqui, for the Appellant; A.K. Dhupar, for the Respondent

Judgement

A.G. Qureshi, J.

This appeal is directed against the award dated 21.4.1981, passed by the Additional Member, Motor Accidents Claims Tribunal, Indore, in Claim Case No. 47 of 1979, whereby the appellants have been held to be disentitled to get any compensation for the death of their brother.

2. The facts leading to this appeal, in short, are that the appellants along with one Krishna Bai had filed a claim petition before the Claims Tribunal for getting compensation amounting to Rs. 50,000/- for the death of Prahlad, who is the son of Krishna Bai and the brother of the present appellants, who allegedly died in a motor accident on 12.12.1978. The respondent No. 1 is the owner of car No. RJO 1094 and respondent No. 2 is the driver of the aforesaid vehicle and on the relevant date it was insured with the insurance company, respondent No. 3. According to the claimants Prahlad, who was the son of claimant No. 1 and brother of claimant Nos. 2 and 3, was serving in a transport company and getting a salary of Rs. 250/- per month and an allowance of Rs. 100/- per month. The claimant No. 2, i.e., appellant No. 2 was not doing any work because of his weak eyesight and as such the three claimants were dependent on the deceased.

On 12.12.1978 at about 5 p.m. when the deceased Prahlad was going on M.G. Road towards Palasia on a Lambretta scooter No. MPN 1094, driving it cautiously, the respondent No. 1 while driving car No. RJO 1094 rashly and negligently dashed against the scooter due to which Prahlad received injuries and he later on succumbed to those injuries. The car was at such a speed that it stopped only at a distance of 50 feet. At the time of the accident Prahlad was 24 years of age and was in sound health and would have survived for atleast 40 years more. Therefore, a compensation of Rs. 50,000/- was claimed.

3. The claim was resisted by the respondents on the ground that there was no negligence on the part of the driver of the car and the deceased was author of his own misfortune. However, the learned Tribunal held that the accident resulted due to rash and negligent driving of the car by the driver of the car and due to the accident Prahlad received injuries resulting in his death. It also held that although the present appellants, who were claimant Nos. 2 and 3, are the sister and brother respectively of the deceased and were dependent on him, still according to law they are not entitled to get any compensation.

The court further was of the view that the claimant No. 1, the mother of the deceased, was entitled to get a compensation of Rs. 18,750/-. Accordingly an award was given in favour of claimant No. 1 only with interest and costs. The claim of the appellants was dismissed. Hence this appeal.

4. Claimant No. 1, the mother of the deceased, Krishna Bai, has not filed any appeal and she is satisfied with the award. There is no cross-objection on behalf of the respondents challenging the finding of the Tribunal that the accident was caused due to the negligent driving of respondent No. 2.

5. Now, before me, it is not in dispute that the accident was caused due to rash and negligent driving of car No. RJO 1094 driven by respondent No. 2 and at the relevant time it was owned by respondent No. 1 and insured by respondent No. 3. The only grievance of the appellants is that the learned Tribunal has awarded the compensation at the lower side and has applied a wrong multiplier ignoring the age of the deceased, his future prospects and longevity. It has also been argued by Mr. Siddiqui, learned counsel for the appellants, that the Tribunal has also wrongly held that the income of the deceased was not Rs. 350/- per month, but only Rs. 250/- per month. The deduction on account of lump sum payment has also been wrongly made after applying the multiplier. The Tribunal has also erred in holding that the present appellants being sister and brother of the deceased were not entitled to get the compensation for the death of deceased Prahlad.

6. On the other hand, the learned counsel for the respondent No. 3, Mr. A.K. Dhupar, argues that the appellants have claimed only Rs. 20,000/- as compensation and an award of Rs. 18,750/- has already been passed, therefore, they are not entitled to get more than Rs. 20,000/- including the award already made.

7. As regards the argument of the learned counsel for the respondents, I find that it is misconceived because the appellants have claimed Rs. 20,000/- as compensation in addition to the compensation granted to Krishna Bai. They have nowhere said that a total compensation of Rs. 20,000/- should have been awarded. According to them, the total claim was for Rs. 50,000/- and the present appellants are entitled to get atleast Rs. 20,000/-.

8. As regards the entitlement of the appellants to get the compensation, it is not disputed that the present appellants were dependent on the deceased. However, they have been denied the compensation on the ground that they are sister and brother of the deceased. The finding of the learned Tribunal is clearly against the judgment of the Supreme Court in the case of [Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another](#), wherein the Supreme Court has held that persons for whose benefit an application for compensation can be made and the manner in which the compensation award may be distributed amongst the persons for whose benefit the application is made are dealt with by Sections 110-A and 110-B of the Motor Vehicles Act and to that extent the provisions of the Motor Vehicles Act do supersede the provisions of the Fatal Accidents Act, 1855, in so far as the motor vehicle accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. It has further been held in the same judgment that in an Indian family brothers, sisters and brother's children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed in an accident there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act. The Supreme Court also took into consideration the recent change in matter of awarding of compensation and while discussing the recommendations of the British Royal Commission was of the view that although the Fatal Accidents Act, 1855, has remained unamended, but still the effect of the amendment of the Motor Vehicles Act, 1939 on the Fatal Accidents Act, 1855 has to be examined and while examining the provisions of the aforesaid two Acts and taking into consideration the 85th report of the Law Commission of India on claims for compensation the Supreme Court was of the view that when the dependants make a claim for compensation for the death of the bread-earner, then the compensation cannot be denied to them even if they are brothers and sisters.

9. A single Bench of this court in the case of [M.P. State Road Transport Corporation and Another Vs. Saifuddin and Others](#), , has taken a similar view following the aforesaid dictum of the Apex Court. Therefore, in view of the aforesaid judgment of the Supreme Court it has to be held that the learned Tribunal erred in disallowing the claim for compensation of the present appellants in view of the fact that they are sister and brother, although it held that they were dependants of the deceased. It, therefore, follows that the present appellants are entitled to get the compensation for the death of the deceased Prahlad.

10. The next question which arises for determination is whether the learned court has wrongly assessed the income of the deceased. After going through the evidence, it is manifest that the appreciation of evidence by the learned Tribunal in arriving at a decision that the earning of the deceased Prahlad was Rs. 250/- per month is proper. Krishna Bai, RW 1, has stated that Prahlad was getting a pay of Rs. 250/- per month and he used to get an allowance of Rs. 10/- per day only when he used to go out of Indore. As such Rs. 10/- per day was given to the deceased for meeting his expenses on tour. Therefore, it cannot be said that it formed part of the income of the deceased. Therefore, on the basis of the evidence of Krishna Bai, supported by AW 3, Asgar Khan, the Claims Tribunal has rightly come to a conclusion that the income of Prahlad was Rs. 250/- per month. In my opinion, the court has also not erred in holding that out of that income Prahlad must have been spending Rs. 125/- per month on himself. As such the monthly dependency of the present appellants and Krishna Bai has rightly been assessed at Rs. 125/- per month.

11. However, the learned Tribunal has clearly erred in applying the multiplier of 15 for arriving at a just compensation to be awarded to the claimants. Prahlad was undisputedly of 24 years of age. The longevity history in the family goes up to 80 years of age as is evident from the testimony of Krishna Bai. Prahlad was not suffering from any ailment. He was an active and healthy young man. Therefore, it was a fit case wherein the multiplier of atleast 18 should have been applied in view of the facts and circumstances of the case. Therefore, it is held that the learned Tribunal has erred in applying the multiplier of 15 for determining the compensation in the case. The multiplier which should have been applied, in the circumstances of the case, could not be less than 18. Therefore, the correct multiplier which has to be applied in the instant case is 18. It is also practically a settled view from the various decisions of different High Courts that once the court applies the multiplier after taking into consideration all the circumstances, then a deduction cannot be made from the amount of compensation on account of payment in lump sum. Therefore, the Claims Tribunal has also erred in this respect by deducting from the amount of compensation in view of the payment in lump sum. As such it is held that the claimants and Krishna Bai are entitled to get a sum of Rs. 27,000/- as compensation.

12. Now, in the instant case, Krishna Bai has taken the compensation of Rs. 18,750/- awarded to her and she has not filed any appeal. The claimants have made a claim for compensation, but have not impleaded Krishna Bai as a party to this appeal for seeking apportionment from the compensation amount. It also appears that the appeal has been filed by appellant No. 1, who is a minor, through Krishna Bai who is the mother of appellant No. 1. Therefore, an order for apportionment cannot be passed in view of the fact that Krishna Bai has not been impleaded as a party and no relief of apportionment has been sought. As such the remaining amount of Rs. 8,250/- has to be awarded to the present appellants from the total amount of Rs. 27,000/- after deducting the amount of Rs. 18,750/- already awarded

in favour of Krishna Bai.

13. In the result the appeal of the appellants is partly allowed. The amount of compensation awarded by the Tribunal of Rs. 18,750/- is enhanced to Rs. 27,000/-. It is also held that the present appellants are entitled to get the compensation for the death of the deceased. However, in view of the aforementioned circumstances they shall get the enhanced amount only. They cannot get the relief of apportionment of the compensation amount from Krishna Bai in view of the fact that Krishna Bai has not been impleaded as a respondent and no such relief is sought. Consequently the appellants are held entitled to get Rs. 8,250/- as compensation with interest on that amount from the date of the application till the recovery of the amount at the rate of 12 per cent per annum. In view of the circumstances of the case, parties shall bear their own costs as incurred. The award of the Claims Tribunal be modified accordingly.