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MADHYA PRADESH HIGH COURT

Case No: 309 of 2006

Gendalal (Deceased) through L.Rs. - Chhaganlal & others.		APPELLANT
	Vs	
Jai Narayan & others		RESPONDENT

Date of Decision: Jan. 1, 1900

Acts Referred:

- Motor Vehicles Act, 1988, Section 166, Section 166 - Application for compensation

Hon'ble Judges: H.P. Singh

Bench: Single Bench

Advocate: Pramod Sahu, Hitendra Singh, Rajesh Choubey

Judgement

1. This order will govern the disposal of M.A.No.309/2006 (Santosh Kumari and others Vs. Vinayak Prasad Gupta and others) and M.A.No.4394/2011 (The State of M.P. Vs. Santosh Kumari and others) as the same arise from a common award dated 17.8.2005, passed by learned IV Addl. MACT, Rewa, in MVC No.122/1999, by which the learned Claims Tribunal has awarded a total sum of Rs.4,86,000/-with interest @ 7% from the date of filing of application to the claimants by way of compensation on account of death of deceased in the accident occurred on 28.02.1998, and fastened the liability to pay the aforesaid compensation by non-applicants No. 2 & 3 driver of offending vehicle and State jointly and severally.

2. It is not in dispute that deceased-Shiv Prasad Kol was employed as Constable in the Police Department and deputed to perform Lok Sabha Election duty on 28.2.1998 at Village Dhoga, District Sidhi (MP). In the said election, the offending vehicle bearing registration No.MP-19-A/0085, was acquired by nonapplicant No.3. After completion of the voting, when the vehicle was returning, the same fell down in a pit, as a result of which deceased died, who was sitting in the aforesaid vehicle.

3. In short the case of the claimants, excluding the admitted facts, is that Claimant No.1 being the widow of deceased and Claimants No. 2 to 7 children of deceased, preferred a claim petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of deceased. According to the claimants, the concerned vehicle was being driven rashly and negligently by its driver/non-applicant No.2 and due to which, it fell down in a pit, resulting into death of deceased on account of injuries sustained by him. The vehicle was hired by State/non-applicant No.3 and at the time of accident, deceased was on his duty. At that time, he was earning Rs.4030/- + D.A. According to the service book, at the time of incident, deceased was 37 years, 7 months and 13 days of age. The compensation awarded by the Tribunal is, too, meager and deserves enhancement; however, by filing the appeal by claimants, inadequacy of the compensation has been assailed.

4. The non-applicants No. 1, 2 & 3, filed their written statements separately. In the written statement, the nonapplicant No.1 has stated that in the year 1999, he has sold the offending vehicle to one Labdharam Sindhi through Santodas Mohandas Laddharam Sindhi. Since non-applicant No.1 has sold the vehicle to Laddharam in the year 1992, he is not responsible for any compensation. Even, non-applicant No.2 was not the driver of the offending vehicle at the time of incident. In the written statement of non-applicant No.2, it is stated that at the time of incident, the offending vehicle was being used for the purpose of Lok Sabha election on the order of Presiding Officer Sidhi. It is also stated in the written statement that Zonal Officer has pressurised and insisted to ply the said offending vehicle on Kachcha Path, due to which the accident occurred. In fact, the offending vehicle was standing for repairs. Insurance of offending vehicle was over prior to the date of incident and information in this respect was already given to the officer concerned. The non-applicant No.3/State in its written statement has stated that at the time of incident, the owner of the vehicle was non-applicant No.1 and due to that, it is not liable for payment of any compensation. During election duty, the persons deputed to perform their election duty, have already been insured and premium in respect thereof has already been paid by the State Government, therefore, compensation of Rs.2,00,000/- has been paid to the claimants as insured amount. An amount of Rs.2,000/- has also been paid to claimants towards cremation. During pendency of present appeal, non-applicant No.1 has died and his name has been deleted by order dated 21.8.2015, which was complied by the appellants vide order dated 26.4.2016.

5. Shri Sahu, learned counsel for claimants submits that in the alleged accident Shiv Prasad, aged about 38 years, while serving in the Home Department (Police) of State of M.P., has died on the spot on account of injuries sustained by him, while he was travelling during the course of discharging his official duty in the Mini Truck (Bus) bearing registration No. MP-19- A/0085. Learned counsel for the claimants submits

that the compensation awarded by the learned Tribunal is unjust, inadequate and on lower side. He further submits that learned Tribunal has not followed the guidelines directed by the Apex Court in awarding just compensation in a death case and has also not taken into account the loss of future prospects of the deceased . He further submits that the deceased being 38 years of age at the time of death, entitled to 50% increase in the future prospects of income as per the legal principle laid down by the Supreme Court in the case of Santosh Devi Vs. National Insurance Company Ltd. and others [(2012) 6 SCC 421]: 2012 (3) T.A.C. 1 (S.C.). Learned counsel for claimants has also relied on the decision rendered by the Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation [2009 ACJ 1298 (SC)] and Kalpana Raj and others Vs. Tamil Nadu State Transport Corporation [2014 (2) T.A.C. 744 (S.C.) and, said that the compensation awarded by the learned Tribunal is against the law laid down by the Hon''ble Apex Court in the said decisions.

6. It is also contended by learned counsel for the claimants that the leaned Claims Tribunal has failed to notice that the deceased was 38 years of age and was posted as Constable in the Police Department. He would have served the department for about 28 years, if he would have been alive and during that period his salary would have certainly doubled. The learned counsel further placed reliance on the decision of the Apex Court in the case of Vimal Kanwar & ors Vs. Kishore Dan & Ors., (2013) 7 S.C.C. 476 : 2013 (2) T.A.C. 6, wherein it is held thus :-

"31. In New India Assurance Co. Ltd., this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, upheld the judgment of the High Court....."

7. It is further contended by learned counsel for claimants that the learned Claims Tribunal has erred in computation of compensation. In the case of Rabhuvir Singh Matolya & ors Vs. Hari Singh Malviya & Ors., (2009) 15 S.C.C. 363 : 2009 (2) T.A.C. 645 and in Sarla Verma and others Vs. Delhi Transport Corporation & another, (2009) 6 S.C.C. 121 : 2009(2) T.A.C. 677, the Apex Court observed that learned Claims Tribunal has a duty, irrespective of the amount claimed, to award a just, equitable, fair and reasonable compensation.

8. Shri Rajesh Choubey, learned Panel Lawyer for the State has submitted that the impugned award fastening the liability on the non-applicant No.3/State is patently erroneous, because the non-applicant No.2/driver of the vehicle was driving the offending vehicle rashly and negligently. The liability would also be fastened on the owner of the offending vehicle. He further submits that one of the claimant has

already got employment and claimants have received the amount of insurance by the Election Commission amounting to Rs.2,00,000/-. In the facts and circumstances of the case, it is prayed that since the impugned award suffers from manifest error in saddling the liability on the non-applicant No.3/State, therefore, the appellant/State may be exonerated from its liability.

9. Now coming to the aspect of negligent driving of the said offending vehicle by its driver/non-applicant No.2 is concerned, Vinayak Prasad Gupta (AW/2)and Bamdeo Pathak (AW/3), have stated that accident occurred due to negligent driving of the vehicle by the non-applicant No.2. Jugal Kishore (NAW/3) employee of the Collectorat has stated that the said vehicle was acquired and deployed in election duty. He has also stated that information of accident was received in his office. He further stated that at the time of incident, the vehicle was under the control of State Government. Accordingly, it is rightly concluded and proved by the learned Claims Tribunal that accident occurred due to rash and negligent driving of offending vehicle, the deceased was employed as police constable and deputed to perform election duty and the said vehicle was acquired for the purpose of election duty by the non-applicant No.3/State. It is also proved that during the course of employment, the incident occurred and in that accident deceased sustained injuries and died.

10. Now coming to the aspect of loss of dependency, the deceased being a Govt. servant, was employed as Constable and earning about Rs.4030/- + D.A. Total Rs.4838/- per month. However, learned Tribunal after applying multiplier of 14, has awarded compensation of Rs.4,76,000/- by adding Rs.5,000/- for all conventional heads and Rs.5,000/- for love and affection. The total compensation awarded by learned Claims Tribunal to claimants amounting to Rs.4,86,000/-, which according to learned counsel for claimants is meagre and on lower side.

11. The Apex Court in the case of Rajesh and others Vs. Rajbir Singh and others [2013 ACJ 1403] has given a definite and conclusive findings with regard to just, equitable, fair and reasonable compensation, in a fatal accident. The guiding principle for determining the compensation has been considered by the Apex Court in para 3, 7, 8, 10, 11, 13, 14 & 15 which is as follows :-

"3. In Nagappa V. Gurudayal Singh, 2003 ACJ 12 (SC), it has been held by this Court that the main guiding principle for determining the compensation is that it must be just. It has also been held that the award must be reasonable."

7. The expression ''just compensation'' has been explained in Sarla Verma''s case, 2009 ACJ 1298 (SC), holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just.

''Just compensation'' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. After surveying almost all the previous decisions, the court has almost standardized the norms for the assessment of damages in motor accident.

8. At para 11, it has been held as follows :

"(11) In Susamma Thomas, 1994, ACJ 1 (SC), this court increased the income by nearly 100 per cent, in Sarla Dixit, 1996 ACJ 581 (SC), the income was increased only by 50 per cent and in Arati Bezbaruah, 2003 ACJ 680 (SC), the income was increased by a mere 7 per cent. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [(Where the annual income is in the taxable range, the words ''actual salary'' should be read as ''actual salary less tax'']. The addition should be only 30 per cent if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was selfemployed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

10. Consequently, it has been held at para 14, as follows :-

"(14). We find it extremely difficult to fathom any rationale for the observation made in the judgment in Sarla Verma''s case, 2009 ACJ 1298 (SC), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is selfemployed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. Rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and

maximum on those who are selfemployed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families. The salaries of those employes under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have also been made for providing security to the families of the deceased employees.

11. Since the court in Santosh Devi''s case, 2012 ACJ 1428 (SC), actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma''s case, 2009 ACJ 1298 (SC) and to make it applicable also to self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30 per cent always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50 per cent to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any.

13. Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa''s case, 2003 ACJ 12 (SC), it was held as follows :-

"(10). Thereafter, section 168 empowers the Claims Tribunal to ''make an award determining the amount of compensation which appears to it to be just''. Therefore, only requirement for determining the compensation is that it must be ''just''. There is no other limitation or restriction on its power for awarding just compensation."

14. The principle was followed in the later decisions in Oriental Insurance Co. Ltd. V. Mohd. Nasir, 2009 ACJ 2742 (SC) and in Ningamma V. United India Insurance Co. Ltd., 2009 ACJ 2020 (SC).

15. Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependents should not face the vagaries of life on account of the discontinuance of the income earned by the victim."

12. Now, the point for consideration is, whether State would be held liable vicariously to pay the compensation to the claimants. It is admitted position that the offending vehicle was requisitioned and acquired by the State/non-applicant No.3 on the basis of the order of Collector Sidhi, for Lok Sabha Election at the relevant time, in which deceased was travelling. It is also admitted position that the non-applicant No.2 was driving the offending vehicle due to Lok Sabha Election. The said vehicle fell down in the pit and accident occurred in which deceased died.

13. Learned Claims Tribunal in para 8 of the impugned award has held that since the non-applicant No.2 was already aware of the pit, he cannot take a plea that he has not seen the pit due to darkness and due to rash and negligent driving of the offending vehicle, the accident occurred, which led to death of deceased. Therefore, learned Claims Tribunal came to the conclusion that non-applicant No.2/driver is also liable to pay the compensation.

14. Learned counsel for the State/non-applicant No.3 submitted that even if the offending vehicle was requisitioned for Lok Sabha election purpose and it was under the control of the State government, still the owner of the vehicle was vicariously liable to pay compensation arising out of the accident.

15. Above contention of learned counsel for the State/nonapplicant No.3 has no merit. In this context, the Apex Court in the case of Brij Lal V. Mangal Chand Maheshwari (1987 ACJ 522) has held in paras 12 & 13 as follows:-

"12.....once the owner of the vehicle surrenders control of the same to another person, it is the latter who becomes liable for the payment of compensation vis-a-vis the accident which is caused by the rash and negligent driving of his driver. In this context an earlier judgment of this Court in Municipal Committee, Sonepat V. Khushi Ram (1983 PLR 313) may be noticed. In that case a vehicle owned by the Haryana State was in possession and under the control of the Municipal Committee, Sonepat. The driver who was in employment of the Municipal Committee caused the accident and a point arose whether the Haryana Government as owner or whether the Municipal Committee Sonepat which was in possession and control of the vehicle was vicariously liable to pay the compensation. In no uncertain terms it was held in this judgment that it was the Municipal Committee and not the State of Haryana which was liable to pay the compensation. It was observed that since the Haryana State had no control over the driver and he was not in its employment, and on the other hand the driver was acting in the course of the employment of the Municipal Committee at the time of the accident, the Committee at the time of the accident, the vicarious liability would be that of the Municipal Committee. The High Court of Madhya Pradesh took the same view in State of Madhya Pradesh V. Premabai, 1979 ACJ 503."

13. .....In such circumstances it can be presumed that who-soever was driving the jeep was doing so under the authority of the Bank. It was held by this Court. In Mohinder Singh and Anr. v. Gurdial Singh and Anr. 1978 A.C.J. 279 (P&H), that in the normal circumstances when a person happens to be driving a vehicle it is to be presumed that he had the authority of the owner to drive and was driving in the course of the employment of the owner unless evidence is placed on the record to prove the contrary. In the present case, this presumption has not been rebutted by the Bank. The contention that the jeep was being driven by the owner himself at the time of the accident has not been found believable. Hence, disagreeing with the Tribunal on the point of liability I hold that it is the respondent, the Primary Land Development Bank, Sirsa, which has to pay compensation to the claimant.

16. Further, in the case of State of Madhya Pradesh V. Premabai and others (1979 ACJ 503), it has been held that master is vicariously liable for the acts of his servant acting in the course of his employment. Paras 5, 7 & 8 of this report read as follows :-

"5. Admittedly, the respondent No. 2 was in the employment of the State Government in the Raipur Development Block. According to the case pleaded by the State Government, the jeep was being driven at the relevant time by the respondent No. 2 in discharge of sovereign functions of the State which amounts to an admission that the respondent No. 2 was driving the vehicle in discharge of his Official duties. The driver is primarily liable for the death of Ramavtar and Shivprasad due to his rash and negligent driving. Since at the relevant time he was driving the vehicle in discharge of his official duties, the State Government is vicariously liable for the acts of its employee. The Supreme Court in Sitaram v. Santanuprasad AIR 1966 SC 1697, has held that a master is vicariously liable for the acts of his servant acting in the course of his employment. For the master''s liability to arise, the act must be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The driver of a car taking the car on the master''s business makes him vicariously liable if he commits an accident. Reiterating this principle in a recent case of Pushpabai v. Ranjit G. and P. Co. (AIR 1977 5C 1735), the Supreme Court has further held that (at pp. 1743, 1744):

"For the master''s liability to arise the test is whether the act was done on the owner''s business or that it was proved to have been impliedly authorised by the owner. The law is settled that master is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment the servant''s act does not make the employer liable.

The recent trend in law is to make the master liable for acts which do not strictly fall within the term ''in the course of the employment'' as ordinarily understood. The owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner''s consent, driving the car on the owner''s business or for the owner''s purposes".

Therefore, the State of Madhya Pradesh is liable for payment of compensation for the acts of its driver, even if the State Government is not owner of the jeep in question.

8. The Claims Tribunal was not right in holding the State Government to be the owner of the jeep in question. Under the general law of Torts and also under the Fatal Accidents Act, the driver is primarily liable for compensation for causing death or injuries by his rash and negligent driving of the vehicle. His master is also vicariously liable for the acts of his servant. Section 110-B only stipulates that the Tribunal shall specify the amount which shall be paid by the insurer, or owner or driver of the vehicle. It does not provide that these three persons are alone liable for the accident. The owner''s liability is not absolute. If the vehicle is entrusted to an independent person and it is in the complete control of that independent person, the owner cannot be made liable for the act of that independent person or his servant. The House of Lords in Arthur White (Contractors) Ltd. v. Tarmac Civil Engineering Ltd. (1967) 3 All ER 586, has held:

"Owner of an excavator gave it on hire and provided a driver. Hire agreement stipulated that the driver would be deemed to be the hirer''s servant. When an accident took place due to negligence of the driver, the hirer was entirely liable and not the owner".

16. In the light of position of law stated above, after having heard learned counsel for the parties and on going through the evidence adduced and after taking into consideration the material evidence available on record, it appears that the amount awarded by the learned Tribunal is on lower side and deserves enhancement and the State/non-applicant No.3 is held liable vicariously and to pay compensation to the claimants.

17. As stated above, since the deceased was earning Rs.4838/- per month, at the relevant time and deceased being about 38 years of age at the time of death, he is entitled to 50% increase in the future prospects of income as per the legal principle laid down by the Apex Court in Santosh Devi case (supra).

18. Also, since the deceased was about 38 years of age at the time of the accident, a multiplier of 15 seems appropriate for determining the quantum of compensation as per the principle laid down by Apex Court in Sarla Verma case (supra).

19. Further, since the deceased has left behind his wife and six children, the amount to be deducted under the head of personal expenses is 1/5th of the total income in the light of the principle laid down in Sarla Verma case (supra), which was reiterated in Santosh Devi case (supra).

20. The learned Claims Tribunal awarded a sum of Rs.5,000/- towards loss of consortium and Rs.5,000/- towards loss of love and affection by minor children, which is on the lower side in the light of the principle laid down in Rajesh case (supra), wherein the Apex Court awarded Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of care and guidance to minor children. Accordingly, I find it appropriate to award compensation of Rs.1,00,000/- each towards loss of consortium and towards loss of love and affection.

21. Learned Claims Tribunal awarded Rs.2,000/- towards funeral expenses, which is also on lower side in the light of aforesaid decisions. Accordingly, I find it appropriate to award Rs.25,000/- for funeral expenses and cost of litigation.

22. Further, learned Claims Tribunal awarded the compensation with interest @7% per annum. I concur with this holding of learned Claims Tribunal in the light of the decision of Apex Court in the case of Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association & Ors [(2011) 14 SCC 481] and accordingly, the amount will carry interest at the rate of 7% per annum on the compensation awarded to claimants.

23. Accordingly, the claimants are entitled to enhanced compensation as per the heads, which are as follows :-

S.No	Heads	Calculation
(i)	Salary	Rs.4838 p.m.
(ii)	50% of salary to be added as future prospects	Rs.4838+50%(2419)= Rs.7257
(iii)	1/5th of (ii) deducted as personal expenses of the deceased	Rs.7257-1451=5806/- p.m.

(iv)	Compensation after multiplier of 15 is applied	Rs.5806x12x15 =10,45,080/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of care and guidance for minor children	Rs.1,00,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Total compensation - insurance amount which has already been paid to claimants	Rs.12,70,080-2,00,000= Rs.10,70,080

24. Resultantly, with the aforesaid, M.A.No.309/2006, is hereby allowed and M.A.No.4394/2011, is hereby dismissed, without affecting the direction of the Tribunal regarding apportionment of the amount of compensation as above, and liability of non-applicants No. 2 & 3. The compensation awarded hereinabove, shall be apportioned between the claimants as per the impugned award. The amount of compensation will carry interest @ 7% per annum as awarded by the Claims Tribunal from the date of filing of the Claim Petition i.e. 7.12.1999 till its realisation. During the said period, if they want to withdraw a portion or entire deposited amount for their personal or any other expenses, including development of their asset, then they are at liberty to file an application before the Claims Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard. If the amount of compensation as mentioned herein above is not deposited by non-applicants No. 2 & 3, within a period of three months from the date of passing of this order, the said amount shall carry interest @ 10% per annum from today, till payment.

25. The M.A.No.309/2006 stands allowed and M.A.No.4394/2011, stands dismissed in view of the foregoing discussions and settled principles of law. Parties shall bear their own costs.