

(1986) 02 CAL CK 0005

Calcutta High Court

Case No: Order No. 546 of 1978

Bharat Petroleum Corporation
Ltd. and Another

APPELLANT

Vs

Sushama Ghosh and Others

RESPONDENT

Date of Decision: Feb. 12, 1986

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110B

Citation: 90 CWN 624

Hon'ble Judges: Monoranjan Mullick, J; G.N. Ray, J

Bench: Division Bench

Advocate: Biswajit Chowdhury, for the Appellant; Sudhir Acharyya, Monohar Chatterjee and Juthika Bose, for the Respondent

Final Decision: Allowed

Judgement

G.N. Ray, J.

This appeal is directed against Order No. 61 passed by the learned Judge, Motor Accidents Claims Tribunal in Motor Accident Claim Case No. 175 of 1971. The objectors Bharat Petroleum Corporation Ltd. and the National Insurance Co. Ltd. are the Appellants in the instant appeal. The said Motor Accident Claim Case No. 175 of 1971 was started on the basis of the claim petition presented by the Respondents, viz., the widow, sons and daughters of Sudhir Kumar Ghosh who died due to an accident on 29th of July, 1971 caused by a petrol tanker bearing No. WBQ 3600 belonging to the Respondent No. 1, Bharat Petroleum Corporation Ltd. The said vehicle was insured with the Appellant No. 2, National Insurance Company Ltd. It is the case of the Respondents who were the claimants-Petitioners in the said motor accident claim case that due to rash and negligent driving of the said petrol tanker No. WBQ 3600, the victim Sudhir Ghosh was crushed to death on the spot at the junction of Raja Monindra Road and Manmatha Datta Road near Ashu Ghosh's Bazar within the city of Calcutta. It appears from the evidence that the victim was

sixty-nine years old at the time of his death. It also transpires from the evidence that the said victim was formerly an employee in a firm belonging to the Tata Group and after retirement from the service of the said Tata Group, the victim got another employment in a firm in Calcutta where he had been earning about Rs. 175/- per month. It transpires from the evidence given by the partner of the firm where the victim was employed after his retirement from the service of Tata Group, that he had been drawing the said salary of Rs. 175/- per month and in May 1970 he left the said job. The partner of the firm has deposed to the effect that the victim had a good health. The learned Judge of the Motor Accidents Claims Tribunal after taking into consideration the evidence on record has inter alia come to the finding that the said accident occurred due to rash and negligent driving of the said petrol tanker and the victim had been earning about Rs. 450/- to Rs. 500/- per month according to the evidence of the widow. The learned Judge has also taken into consideration that the victim was an overseer in a private firm and he could also do private works. On such consideration, the learned Judge was of the view that the family would have received from the victim at least Rs. 10,000/- if the victim had not died due to the said accident. The learned Judge did not allow any maintenance to the married daughter, Sabita Mitra. But he allowed a sum of Rs. 2,000/- to the widow on account of loss of consortium and he has also awarded a sum of Rs. 400/- to each of such sons and daughters on account of loss of love and affection from the deceased father. The learned Judge has, therefore, passed an award for a total sum of Rs. 15,200/- for the loss of income and also the loss of consortium and also the loss of love and affection to the widow, sons and daughters. He has also allowed a sum of Rs. 100/- towards the cost incurred for the said motor accident claim case.

2. Against the said judgment and award of the learned Tribunal the owner of the said vehicle and also the insurer who are objectors in the said claim case, have preferred the present appeal.

3. Mr. Chowdhury, learned Counsel appearing for both the Appellants, has contended that in the instant case the learned Tribunal has awarded the said sum of Rs. 10,000/- towards the pecuniary loss on account of the death of the said victim without any material whatsoever. Mr. Chowdhury has contended that admittedly the said victim was out of employment at the time of his death. He retired from the service of the Tata Group sometime in 1960, and in December 1960 he joined a private firm and left the service in the said private firm in May 1970. The partner of the firm deposed to the effect that the victim had been earning a remuneration to the extent of Rs. 175/- per month only in the said private firm. Mr. Chowdhury has contended that there is no evidence whatsoever that after the victim had left the service in the private firm in May 1970, he had been earning any amount from any source. In the aforesaid circumstances, there was no reasonable basis for the learned Judge to proceed on the footing that the victim had been earning at the rate of about Rs. 500/- per month and he could contribute about Rs. 10,000/- to the family if he had not died due to the said accident. Mr. Chowdhury has contended

that the victim was fairly advanced in age at the time of the accident and he had been spending retired life without any job or earning whatsoever. In the aforesaid circumstances, it could not be contended by the claimants that they had suffered any pecuniary loss on account of the death of the said victim.

4. Mr. Chowdhury has also contended that the learned Judge of the Motor Accidents Claims Tribunal had gone wrong in awarding sums on account of loss of consortium to the widow of the victim and also to the sons and daughters on account of loss of love and affection and/or loss of company. In this connection, Mr. Chowdhury has referred to an English decision made in the case of *Best v. Samuel Fox & Company* 1952 AC 716. In the said decision the House of Lords refused to grant any amount to the wife on the score of loss of consortium because of the death of her husband. He has also referred to passage appearing at page 270 of the *Law of Damages* by Ogus, 1973 Edition, wherein it has been observed that no damage is to be awarded for the loss of consortium in the event of the death of the husband to a wife. Mr. Chowdhury has also referred to a Division Bench decision of the Punjab High Court made in the case of [Municipal Corporation, Delhi Vs. Sobhag Wanti etc.,](#) . In that case also it was observed by the Punjab High Court that no damage on account of suffering by the victim or any mental agonies suffered by the close relations of the victim should be granted in a fatal accident. Mr. Chowdhury has also referred to a decision of Rajasthan High Court made in the case of *Gyarsi Devi v. Sain Das* 1982 ACJ (Supp) 306 (Rajasthan). A single Judge of the Rajasthan High Court has held in the said decision that the relations of the victim are not entitled to any compensation for suffering, agony and mental pain on account of the death of a son. Mr. Chowdhury has also submitted that different High Courts in India have also not allowed the claim for damages on account of mental agony and suffering on account of the loss of near and dear ones. He has therefore contended that the learned Judge in the instant case had gone wrong in awarding a substantial amount to the claimants on account of loss of consortium and loss of love and affection in view of the death of the victim. Mr. Chowdhury has, therefore, submitted that the instant appeal should be allowed and the award passed by the learned Judge of the Tribunal should be set aside.

5. Mr. Acharyya, learned Counsel appearing for the claimants-Respondents, has submitted that it will not be correct to contend that there was no evidence about the income earned by the victim at the time of his death. He has contended that the widow of the victim had deposed to the effect that the victim had been earning about Rs. 400/- to 500/- per month. The said widow had also deposed to the effect that the victim was an overseer and he was also earning from private sources. Mr. Acharyya has contended that there is no evidence to the effect that any other member of the family had been contributing financially for the maintenance of the family. In the aforesaid circumstances, it could be reasonably presumed that the victim had been supporting the said family by his personal income. Mr. Acharyya has also contended that for the purpose of awarding compensation in a case of fatal

accident, it is not always necessary for the claimants to establish that at the time of the accident the victim had been actually Earning money. It is enough for the court to award reasonable compensation if the claimants can establish that the victim was capable of earning and there was a chance of prospective income. He has contended if there is reasonable basis for coming to the conclusion about victim's potentiality to earn income in future, then the award on account of prospective income can be passed by the learned Judge. In support of this contention, Mr. Acharyya has referred to the decision of the Punjab High Court reported in [Municipal Corporation, Delhi Vs. Sobhag Wanti etc.,](#) since relied on by Mr. Chowdhury, learned Counsel for the Appellant in a different context. Mr. Acharyya has also referred to a Division Bench decision of the Allahabad High Court made in the case of [U.P. State Road Transport Corporation, Allahabad Vs. Km. Deepti and Others etc.,](#) . In the said case also the Allahabad High Court has held that if a reasonable basis for the prospective income is established by the claimant, the court can pass a suitable award for compensation on account of monetary loss on such prospective income. The Allahabad High Court has relied on a decision of the Supreme Court made in the case of [C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others,](#) . The Supreme Court in the said decision has also relied on the English decision made in the case of Taff Vale Railway Company v. Jenkins, 1913 AC 1. It appears that the Privy Council in the said decision had also taken into consideration the prospective income of the victim and on that basis awarded a monetary compensation to the claimants. Mr. Acharyya has, therefore, contended that even if it is assumed that the widow failed to give specific instances of the source of earning of the victim at the time of the accident, the learned Judge was quite justified in proceeding on the footing that the victim had the capacity to earn about Rs. 450/- to Rs. 500/- per month and taking into consideration the advanced age of the victim only Rs. 10,000/- was awarded by the learned Judge as a loss of earning from the said victim. Mr. Acharyya has, therefore, contended that the award made by the learned Judge towards the pecuniary loss on account of the death of the victim cannot be lawfully assailed before this Court. Mr. Acharyya has also contended that so far as the loss of consortium and also the loss on account of separation and loss of love and affection due to the death of near and dear one in the family are concerned, this Court and the other High Courts have allowed compensation on account of such loss. In this connection, Mr. Acharyya has referred to a decision of Andhra Pradesh High Court reported in [Srisailam Devastanam Vs. Bhavani Pramillamma and Others,](#) . The court has allowed compensation on account of loss of companion and love and affection in view of the death of near and dear one in the family. He has also referred to a Division Bench decision of this Court made in the case of [Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others,](#) . In the said decision, on account of the death of the husband, compensation to the widow for the loss of consortium and also to the children for the loss of the father had been allowed by this Court. Mr. Acharyya has also referred to a decision of the Bombay High Court made in the case of [Gaurabai and Another Vs. Jagsih Prasad and](#)

[Another](#), . The Bombay High Court allowed compensation on account of marriage expenses for a sum of Rs. 1,000/- to the unmarried daughter. Mr. Acharyya in this connection has referred to the Treatise on Motor Vehicles Act by Mullick and Mahapatra (page 581). The learned authors in the said treatise have referred to various decisions of Indian High Courts where loss on account of consortium and also mental suffering of the dear and near ones on account of the death of a member in the family have been taken into consideration by different High Courts in India and compensation has been awarded on such consideration. Reference in this connection may be made to the following decisions: [Prem Devi Pandey and Others Vs. Dayal Singh and Others](#), ; [Sushila Rani Sharma and Others Vs. Som Nath and Others](#), ; [Subash Chander and Others Vs. State of Haryana and Others](#), ; [Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others](#), ; [Abdulkadar Ebrahim Sura and Another Vs. Kashinath Moreshwar Chandani and Others](#), and Basappa v. K.H. Sreenivasa Reddy 1982 ACJ (Supp) 585 (Karnataka).

Referring to the aforesaid decisions of different High Courts where compensation has been awarded on account of loss of consortium and/ or loss of love and affection for the death of near and dear one in the family, Mr. Acharyya has contended that although in some cases such award has not been given, but it may be noted that most of the Indian High Courts are in favour of awarding some compensation on account of loss of consortium and/or loss of companion, love and affection. Mr. Acharyya has contended that the award on such account may not be a very heavy sum but within the scope or ambit of the provisions of the Motor Vehicles Act such compensation can be awarded by way of just compensation on account of death in a fatal accident. Mr. Acharyya has submitted that for the loss of consortium of the widow and the loss of love and company of the sons and daughters, a small sum of Rs. 5,200/-has been awarded by the learned Judge, and it cannot be contended that such amount is unreasonably disproportionate in the facts and circumstances of the case.

6. After giving our anxious consideration to the respective contentions made by the learned Counsel appearing for the parties, it appears to us that a compensation on account of pecuniary loss can be and should be granted by the court not only on account of actual income being earned by the victim at the time of his death, but also on account of the prospective income which the victim was reasonably expected to earn in future had his life been not cut short on account of the accident. Earning on account of the prospective income has been recognised by the English Courts and also by the Supreme Court as referred to in the decisions cited hereinbefore. It should, however, be noted that prospective income must have a reasonable basis and should not be a speculative income. In the instant case, it appears from the evidence adduced that the victim had been gainfully employed even after superannuation from the Tata Group in a private firm, and a few months before his death he had been in employment in a private firm. There is also evidence to the effect that as an overseer he was capable of earning from private

sources. There is no evidence to the effect that the victim had not been supporting the family when he left the private service in May 1970. In the aforesaid circumstances, there is basis on which the court can proceed that the victim had a prospective income at the time of the accident. It, however, does not appear to us that such income should be calculated on the basis of Rs. 450/- or Rs. 500/- per month, simply because the widow had stated that the victim had been earning the said sum per month at the time of the accident. But in the facts of the case it appears to us that the victim could reasonably earn Rs. 300/- per month. Since the victim was quite advanced in age, in our view it will be reasonable if such earning is limited by a period of two years. We, therefore, think that it will be only fair and just if Rs. 7,200/- is awarded as a loss of earning in view of the death of the said victim.

7. So far as the loss on account of consortium and also loss of love and affection for the widow, sons and daughters respectively of the victim are concerned, it appears to us that the way of family life to which Indian families are accustomed, the loss of father, mother, spouse, brother or sister cannot be overlooked in awarding compensation. In our view, within the scope or ambit of Section 110-B of the Motor Vehicles Act in awarding "just compensation", the factor of loss of consortium and loss of company of a near and dear one in the family can be taken note of and a reasonable compensation can be awarded. Such amount of compensation is however not linked up with the status of the victim in the society or his capability of earning and the sum should not vary from person to person according to his status in the society. After all loss on account of consortium or loss of love and affection and companion cannot be objectively assessed, as it can be done in the case of loss of income, some amount, in our view, should be awarded to the parents, spouse, sons and daughters. In quantifying such amount the court should take note of the age of the victim and also the age of the members of family losing the company of the victim. This amount, considering the advanced age of the victim, in our view, should be fixed at Rs. 2,000/- for all the claimants-Petitioners (Respondents herein).

8. In the aforesaid circumstances, this appeal is allowed in part. The judgment and award passed by the learned Judge, Motor Accidents Claims Tribunal is modified to this extent that the claimants-Petitioners (Respondents) will get a sum of Rs. 9,200/- and also litigation cost of Rs. 100/-. It appears that a sum of Rs. 7,000/- since deposited by the Appellant No. 2 (insurance company) has been allowed to be withdrawn by the claimants-Petitioners (Respondents) in terms of order passed by this Court previously during the pendency of this appeal. The claimants-Petitioners will therefore be entitled to receive the balance sum of Rs. 2,200/- and the litigation cost of Rs. 100/-. The Appellant No. 2, National Insurance Company Limited, is directed to pay to the Respondents (claimants-Petitioners) the balance sum of Rs. 2,200/- as compensation and a further sum of Rs. 100/- towards litigation cost or deposit the same in the Tribunal below within three months from today.

There will be no order as to costs in this appeal.

Monoranjana Mullick, J.--I agree.