

CASE NO.:
Appeal (civil) 5523 of 2003

PETITIONER:
State of Haryana and Another

RESPONDENT:
Vs.
Jasbir Kaur & Ors.

DATE OF JUDGMENT: 05/08/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

(Arising Out of S.L.P. (Civil) No.21267 of 2001

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the legality and propriety of the judgment rendered by Division Bench of High Court of Punjab and Haryana at Chandigarh, dismissing the appeal filed by the State of Haryana and General Manager, Road Transport, Fatehabad, the present appellants.

In a nutshell, the background facts relevant for the purpose of dealing with this appeal are as follows:

One Jagga Singh (hereinafter referred to as 'the deceased') lost his life in a vehicle accident on 3.2.1999. His widow (respondent no.1) and minor son Sewak Singh (respondent No.2) filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for grant of compensation to the tune of Rs.10 lakhs. In the claim petition the mother of the deceased was impleaded as proforma respondent. The claimants asserted in the claim petition that the vehicle involved in the accident was owned by the Haryana Roadways and one Om Parkash was driving the vehicle bearing no. HR-39-0418. It was pleaded that the deceased was 25 years old, was an agriculturist and was earning about Rs.10,000/- per month by cultivating his agricultural land and from his avocation of purchasing and selling cattles, and by selling milk.

The claim was resisted by the appellant-Haryana Roadways by taking the stand that there was no rash and negligence on the part of the driver of the vehicle and in any event there was contributory negligence on the part of the deceased. The claim was also resisted on the ground that amount claimed was highly exaggerated, without any rational basis and there was no material to show as to what was the deceased's income and the deprivation of financial contribution by the deceased to his family. Another claim petition was filed by one Ajaib Singh who stated to have been injured in the accident in question. We are not

presently concerned with his case. Motor Accident Claims Tribunal, Fatehabad (in short 'Tribunal') by order dated 27.3.2001 held that the claimants were entitled to compensation of Rs.6.5 lakhs for loss of pecuniary benefits. It was further stipulated that the claimants would be entitled to the interest @ 9% on the amount of compensation from the date of application till realization. For determining the compensation the Tribunal held that the monthly income of the deceased can be reasonably assessed at Rs.4500 per month. After deducting Rs.1500/- for personal expenses, the Tribunal took Rs.3000/- per month to be the contribution and multiplier of 18 was applied as per second schedule to the Act. The appeal before the High Court filed by the present appellants was dismissed on the ground that there was no infirmity in the award.

Learned counsel for the appellants submitted that with practically no evidence the Tribunal and the High Court proceeded to award Rs.6.5 lakhs. There was not even an iota of evidence to substantiate the claim of agricultural income from about 4 acres of land and there was no evidence that the deceased was having any income from sale of milk or cattle. The High Court having accepted that there was no material to show that the deceased had any income from sale of cattle or milk came to an abrupt and presumptuous conclusion that monthly income was Rs.4500/-. There was no material to show as to what was the type of land, annual yield, if any, and therefore, the award is not sustainable in law, and the High Court erred in dismissing the appeal.

Per contra, learned counsel for the claimants submitted that the High Court has gone by the probabilities and the realities of life. Even if it is accepted that there was no material to show the income from the agricultural or dairy, a rational view can be taken about the possible income from the agricultural land, which the Tribunal did and the High Court give its seal of approval.

It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just"

denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)).

It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered. Furthermore, there was no material before the Tribunal to arrive at the figure of Rs.4500 per month. No reason has been indicated to arrive at this figure. In the light of what has been discussed above about "just compensation" the income cannot be estimated without any material to justify the estimation. In the normal course, we would have remitted the matter back to the Tribunal for fresh consideration. But considering the fact that one young person lost his life, and the matter was pending before the Tribunal and the High Court for some years, we feel it appropriate to take all relevant factors into consideration, and decide the matter. Gauging the relevant aspects, noted above, the monthly income is fixed at Rs.3000/- per month, and after deducting Rs.1,000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs.2,000/- per month. Worked out on the basis of multiplier of 18, the compensation is fixed at Rs.4,32,000/-. The amount of Rs.2,000/- awarded by the Tribunal for funeral expenses is not interfered with and thus the total compensation comes to Rs.4,34,000/-. The rate of interest i.e. 9% per annum as fixed by the Tribunal and affirmed by the High Court is appropriate, and does not need any alteration. After adjusting the sum which was deposited pursuant to the order of this Court dated 14.12.2001, the balance amount along with interest shall be deposited within three months from today before the Tribunal. On the deposit being made along with the amount already deposited, a sum of Rs.3 lakhs shall be kept in the fixed deposit in the name of the claimants and a sum of Rs.50,000/- shall be kept in fixed deposit in the name of Smt. Baldev Kaur, mother of the deceased. They shall be entitled to draw interest on the deposit, which shall be re-deposited for further terms of five years. In case of urgent need, it shall be open to the claimants to move Tribunal for release of any part of the amount in deposit. The Tribunal shall consider the request for withdrawal and shall direct withdrawal in case of an urgent need and not otherwise of such sum as would meet the need. It shall be specifically indicated to the Bank where the deposits are to be made that no advance or withdrawal of any kind shall be permitted without the order of the Tribunal. It shall be open to the claimants to approach the Tribunal for variance of the order relating to deposit in

fixed deposit, if any other scheme would fetch better returns and also would provide regular and permanent income.

The appeal is allowed to the extent indicated. Costs made easy.

JUDIS