

Smt. Manjushri Raha and Others

Vs

B.L. Gupta and Others

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Civil Appeal Nos. 2310 and 1826 of 1968

( Syed M. Fazal Ali, V.R. Krishna Iyer JJ )

09.02.1977

JUDGMENT

FAZAL ALI, J. –

1. With the emergence of an ultra-modern age which has led to strides of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune. Such are the cases of the victims of motor accidents resulting from rash and negligent driving which take away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for though the percentage of deaths caused by motor accidents in other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our law-makers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimise motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in the motor accident. The time is ripe for serious consideration of creating no-fault liability. Having regard to the Directive Principles of State Policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalisation of general insurance companies and the expanding trend towards nationalisation of bus transport, the law of torts based on no-fault needs reform. While Section 110 of the Motor Vehicles Act provides for the constitution of Claims Tribunals for determining the compensation payable, Section 110A provides for the procedure and circumstances under which the family of a victim of a motor accident can get compensation and lays down the various norms, though not as exhaustively as it should have. The Courts, however, have spelt out and enunciated valuable principles from time to time which guide the determination of compensation in a particular situation. Unfortunately, however, Section 95(2)(d) of the Motor Vehicles Act limits the compensation to be paid by an Insurance Company to Rs. 2000 only in respect of death to any third party and this is one disconcerting aspect on which we shall have to say something in a later part of our judgment.

2. With this little preface we now take up the facts in the appeals by certificate filed by B. L. Gupta and Smt. Manjushri Raha in this Court, and which after being consolidated have been disposed of

by one common judgment both by the Claims Tribunal as also by the High Court. Manjushri Raha, the main appellant in Civil Appeal 2310 of 1968 will, in short, be referred to hereafter as "Raha", whereas respondents Oriental Fire & General Insurance Company would be referred to as 'Oriental Company' and the New India Insurance Company as "New India Company". Smt. Manjula Devi Bhuta representing the owner of vehicle No. MPG-4615 will be referred to as "Bhuta", whereas B. L. Gupta the owner of vehicle No. MPG-4307 belonging to the M.P. Speedways Company would be referred to as "Gupta". Padmavati Shastri, the respondent in one of the appeals, would be referred to as "Shastri". The appeals arise in the following circumstances.

3. Claim Case No. 6 of 1962 was filed by Raha along with her two minor children against Bhuta, Sushil Kumar driver of vehicle No. MPG 4615, Oriental Company, New India Company, Gupta owner of the M.P. Speedways Company and Ram Swaroop driver of vehicle No. MPG 4307. The applicant Raha claimed compensation for a sum of Rs. 3,00,000 against the respondents under Section 110A of the Motor Vehicles Act. Similarly Shastri filed Claim Case No. 5 of 1962 against the respondents mentioned above claiming Rs. 1,20,000 as compensation from the aforesaid respondents. Both these claims were consolidated and heard and decided by one common judgment by the Claims Tribunal, Gwalior. The facts giving rise to the claims of Raha and Shastri were that on April 10, 1962 Satyendra Nath Raha the husband of Raha and Uma Shanker Shastri the husband of Shastri were travelling in vehicle No. MPG 4307 (owned by Gupta of the M.P. Speedways Company) from Bhind to Gwalior. When the bus travelled a distance of about 26 miles on the Bhind-Gwalior road, another bus bearing No. MPG 4615 belonging to Bhuta was seen coming from the opposite direction. The driver of the M.P. Speedways Company was Ram Swaroop while that of the bus belonging to Bhuta was Sushil Kumar. When the two buses were approaching in opposite directions, both the drivers being negligent and having failed to take the necessary precautions of keeping to their left led to a head-on collision of the two buses as a consequence of which the two persons, namely, Satyendra Nath Raha and Uma Shanker Shastri sustained fatal injuries to which they succumbed on the same day in the Gohad Hospital. The facts and circumstances under which the accident took place have not been disputed by counsel for the parties, nor have the essential findings of fact given by the Claims Tribunal and the High Court been challenged before us. The appeal, therefore, lies within a very narrow compass.

4. But before dealing with the appeals, it may be necessary to indicate the reliefs granted by the Claims Tribunal to the parties concerned. The Claims Tribunal decreed the claim of Raha to the extent of Rs. 60,000 only against all the respondents holding that the drivers of both the buses were negligent. The claim of Shastri was decreed only to the extent of Rs. 40,000 against Bhuta, Sushil Kumar driver and Oriental Company. No decree was passed against Ram Swaroop driver of the M.P. Speedways Company and New India Company because there was no allegation of negligence against these persons in the claim filed by Shastri. Against the decision of the Claims Tribunal, Gupta filed Miscellaneous First Appeal 203 of 1956 against Bhuta, Raha and others which was dismissed by the High Court. Civil Appeals 1826 of 1968 and 132 of 1969 in this Court arise out of the aforesaid appeal before the High Court. Miscellaneous First Appeal 219 of 1965 was filed by Bhuta against Raha, Gupta and others which was also dismissed by the High Court, but Bhuta has not filed any appeal to this Court against the decision of the Tribunal and the High Court in that appeal. But Bhuta had filed an appeal in the High Court being Miscellaneous First Appeal 220 of 1965 against Shastri which was allowed by the High Court to this extent that the decree against Gupta and Ram Swaroop was made joint and several along with the appellant Bhuta. Miscellaneous First Appeal 222 of 1965 was filed before the High Court by Oriental Company against Shastri but that was also dismissed. Similarly Miscellaneous First Appeal 223 of 1965 was filed before the High Court by Oriental Company against Raha which was also dismissed along with the cross

objection which was filed by Raha for enhancement of the compensation. The High Court, however, held in Miscellaneous First Appeal 223 of 1965 that Oriental Company was to pay a total compensation of Rs. 20,000 out of which Rs. 8,000 was to be paid to Shastri and Rs. 12,000 to Raha.

5. The present appeals in this Court have been filed by Gupta and Raha. Neither Shastri, nor Bhuta, nor any of the Insurance Companies have filed any appeal before this Court. The short point raised by Mr. Sanghi appearing for Gupta was that in the circumstances the compensation awarded by the Claims Tribunal to Raha was too high and at any rate the High Court ought not to have made the appellant Gupta liable jointly and severally with others. In the appeal filed by Raha it is claimed that the compensation granted by the Claims Tribunal was grossly inadequate and should be enhanced. It has been stated before us by Mr. Sanghi, though not admitted by the other side, that Gupta and the Insurance Companies have paid a total amount of Rs. 29,000 (Rs. 15,000 by Gupta and Rs. 14,000 by Insurance Companies) in full and final settlement of the claim of Raha and, therefore, the appeal should be decreed in terms of the compromise. It was further contended that even if the amount awarded by the Claims Tribunal to Raha is enhanced that should be payable Bhuta alone and not by the appellant Gupta, who has settled the claim with the appellant Raha. There can be no doubt that if really a settlement has been reached between Gupta and Raha then no further decree can be passed as against Gupta. The appellant further undertook to pay Rs. 10,000 to Shastri in fulfilment of her claim. As Rs. 10,000 has already been paid to Shastri with the result that Bhuta has yet to pay Rs. 20,000 being her share to Shastri.

6. Finally, it was contended that as there was no allegation of negligence against Ram Swaroop the driver of the M.P. Speedways Company the High Court ought not to have decreed the claim of Raha against the appellant Gupta. We have perused the plaint before the Claims Tribunal, which is rather loosely drafted, but it clearly contains the relief of compensation even against Gupta and Ram Swaroop driver. The High Court has pointed out that even though there is no clear plea of negligence in the claim of Raha, the facts alleged and proved in the case clearly show that Ram Swaroop the driver of the M.P. Speedways Company was both rash and negligent. Pleadings have to be interpreted not with formalistic rigour but with latitude or awareness of low legal literacy of poor people. We fully agree with the finding of the High Court and see no reason to disturb it. We also agree with the order of the High Court by which it makes Gupta and Bhuta jointly and severally liable. That was the only decree which could have been passed in the circumstances.

7. Coming now to the appeal filed by Raha, counsel for the appellant submitted that the compensation awarded by the Claims Tribunal is grossly inadequate and certain important factors have not been taken into consideration. On a perusal of the judgment of the Claims Tribunal it would appear that the only basis on which the compensation has been awarded is the total salary which the deceased Satyendra Nath Raha would have got upto the age of 55 years which has been taken at Rs. 1,20,000 and after deducting half which would normally have been spent, the actual income lost to the family was Rs. 60,000. It seems to us, however, that in making the calculation, the Claims Tribunal and the High Court overlooked two important and vital considerations. In the first place, while the admitted position was that the deceased Satyendra Nath Raha was working in the grade of Rs. 520-30-830-35-900 and was getting a salary of Rs. 620 p.m. at the time of his death, the Courts below have not taken into account the salary which he would have earned while reaching the maximum of his grade long before his retirement. It is admitted that the deceased Satyendra Nath Raha was 37 years of age at the time of the accident and at this rate he would have reached the maximum of the grade of Rs. 900 at the age of 46 years i.e. full 9 years before his superannuation. The claimant has produced a certificate Ext. P-4 from the office of the Accountant

General, Madhya Pradesh, Gwalior, which shows that from April 11, 1962 (i.e. the date next to the date of the death of Satyendra Nath Raha) to October 15, 1980 which would be the last working day of the deceased Raha, the deceased Raha would have drawn Rs. 1,89,402 including the increments earned and the maximum grade drawn. This figure may be rounded off to Rs. 1,88,000. Even if half of this be deducted as being rightly taken to have been spent by the deceased to cover day to day domestic expenses, payment of income-tax and other charges, the actual income lost to the family including the value of the estate and the loss to the dependents would be Rs. 94,000. This will be a fair estimate which does not take into account the economic value of the deprivation of the wife of her husband's company for ever and the shock felt by the children. It was suggested by the High Court that as the deceased Raha was not a permanent employee, the amount taken into account by the Compensation Tribunal was correct. This is, however, not a consideration which could have weighed with the Claims Tribunal in making the assessment, because it was purely contingent. On the other hand with the rise in price index it could well have been expected that there would be several revisions in the grade by the time the deceased Raha had attained the age of superannuation, which, if taken into account, would further enhance the amount. In these circumstances, therefore, we think that the amount of Rs. 90,000 would represent the correct compensation so far as the salary part of the deceased Raha is concerned.

8. The Courts below have also not considered the effect of the pensionary benefits which the deceased Raha would undoubtedly have got after retirement and in fact the Claims Tribunal has restricted the span of the life of the deceased only to the age of 55 years i.e. the age of superannuation, whereas in the present economic conditions the life of an average Indian has increased more than two-fold. It is, therefore, reasonable to expect that if the deceased had not died due to accident, he would have lived up at least upto the age of 65 years, if not more, so as to earn the pensionary benefits for 10 years after retirement. According to the certificate Ext. P-4 the deceased Raha would have been entitled to a monthly pension of Rs. 337-50 which would mean about Rs. 4,050 per year. There can be no doubt that whole of this amount would have to be spent, there being no other source of income and, therefore, this amount cannot be said to be lost to the estate. The certificate Ext. P-4 further shows that the deceased Raha would have got death-cum-retirement gratuity to the extent of Rs. 13,500 calculated on the basis of the presumptive average emoluments and presumptive last emoluments. If the deceased had lived after superannuation, he might probably have got this amount. After adding this amount of Rs. 13,500 to Rs. 90,000 the total amount would come to Rs. 1,03,500 which may be rounded off to roughly Rs. 1,00,000. In any view of the matter, therefore the appellant Raha was entitled to a compensation of Rs. 1,00,000, and the Courts below erred in completely overlooking these two important aspects which we have discussed.

9. It appears that the appellants Raha as also Padmavati Shastri could have got heavier compensation from the Insurance Companies, but unfortunately the Motor Vehicles Act has taken a very narrow view by limiting the liability of the Insurance Companies under Section 95(2)(d) to Rs. 2,000 only in case of a third party.

10. While our Legislature has made laws to cover every possible situation, yet it is well nigh impossible to make provisions for all kinds of situations. Nevertheless where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through Insurance Companies. It is true that while our law makers are the best judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their

attention. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry or occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances it is only just and fair that the Legislature should make suitable provisions so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000 or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2,000. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the Insurance Companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish.

11. In *M/s. Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd.* (AIR 1971 SC 1624 : (1971) 1 SCC 785), this Court has clearly held that an Insurance Company is not liable to pay any sum exceeding Rs. 2,000 upto a maximum of Rs. 20,000 on the plain words of Section 95(2)(d) of the Motor Vehicles Act and the only remedy to provide for adequate compensation for a precious life of a human life is for the Legislature to take a practical view of the loss of human life in motor accidents.

12. In *P. B. Kader v. Thatchamma* (AIR 1970 Ker 241 : 1971 Supp SCR 20) a Division Bench of the Kerala High Court, while dwelling on this aspect observed as follows :

It is sad that an Indian life should be so devalued by an Indian law as to cost only Rs. 2000, apart from the fact that the value of the Indian rupee has been eroded and Indian life has become dearer since the time the statute was enacted, and the consciousness of the comforts and amenities of life in the Indian community has arisen, it would have been quite appropriate to revise this fossil figure of Rs. 2000 per individual, involved in an accident, to make it more realistic and humane, but that is a matter for the legislature; and the observation that I have made is calculated to remind the law-makers that humanism is the basis of law and justice.

13. We find ourselves in complete agreement with the observations made by the Kerala High Court in the aforesaid case and we would like to remind the law-makers that the time has come to take a more humane and practical view of things while passing statutes like the Motor Vehicles Act in regulating compensation payable by Insurance Companies to victims of motor accidents. We have not the slightest doubt that if the attention of the Government is drawn, the lacuna will be covered up in good time.

14. The result is that Civil Appeal Nos. 1826 of 1968 and 132 of 1969 are dismissed and Civil

Appeal No. 2310 of 1968 is allowed to this extent that the claim preferred by Raha is enhanced from Rs. 60,000 to Rs. 1,00,000. As no authentic proof of any settlement between Gupta and Raha has been produced before us, the decree passed by us will be jointly and severally recoverable from Gupta and Bhuta after giving credit for the amounts received by Raha. It will, however, be open to the executing court on proof of any full and final settlement of the claims of Raha with Gupta or any other judgment-debtor to adjust the claims accordingly under Order 23 Rule 3 of the Code of Civil Procedure. In the circumstances of the case, the parties will bear their own costs in this Court.

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