Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal

Vs

Sudhakar and Others

Civil Appeal Nos. 2254 and 2255 of 1968

(V.R. Krishna Iyer, A.C. Gupta JJ)

15.04.1977

JUDGMENT

GUPTA, J. -

1. On June 23, 1961 a bus owned by the appellant which was going from Gwalior to Indore met with an accident as a result of which two of the passengers Mrs. Usha Kotasthane, aged about 23 years, and her one year old son, died and several others received serious injures. Among the injured was one Sailesh Kumar, a boy of about four years. Claims for compensation were field before the Motor Accident Claims Tribunal at Gwalior. The application for compensation for the death of Mrs. Usha Kotasthane and her child was made by her husband Shri Sudhakar Kotasthane, and the claim in respect of the injury to minor Sailesh Kumar was made on his behalf by his guardian mother Shrimati Indubala Bhandari. Sudhakar Kotasthane and Indubala Bhandari were also travelling in the same bus and both sustained injuries and were awarded compensation by the Tribunal, but these appeals do not concern their cases or the claim in respect of Kotasthane's dead child. The two appeals before us at the instance of the Madhya Pradesh State Road Transport Corporation, on Certificate granted by the Madhya Pradesh High Court, are against the common judgment of the High Court enhancing the quantum of damages awarded by the Claims Tribunal in respect of the death 2254 of 1968 relates to the award in Mrs. Kotasthane's case and C. A. 2255 of 1968 to that in the case of Sailesh Kumar.

2. As regards the death of Mrs. Usha Kotasthane, the Claims Tribunal awarded Rs. 15,000 as damages to her husband Sudhakar. At the time of her death she was employed as Physical Instructors in a school at Indore, getting a salary of Rs. 190 per month in the grade of Rs. 150-10-250. Admittedly Sudhakar remarried within a year of the death of his first wife. This is how the Tribunal dealt with the claim :

> In the present case, it is a case of the death of the wife. The husband was not dependent on the earning of his wife. He was himself earning independently. The applicant has nowhere stated that on account of the death of his former wife, he has been deprived of there income, nor that he was dependent upon her. It is true, that the wife of the applicant was educated, healthy employed, and earning. As far as the loss of companionship is concerned, it is again true that the faced this loss for nearly. 11 months after which, he married for the second time. No cross-examination has been led by the non-applicant on the point that the second wife is as accomplished, educated and healthy as the former one was. The death of the wife of the applicant must have caused him mental shock, pain and inconvenience in his household. The work in the house, which he could take from his wife in looking to the household

> was also not available to the appellant during this period of 11 months. The advantage of established married life with a child in the lap, was also lost to the applicant during this time. Taking into consideration all these facts in favour of the applicant and the fact, against him that he was married again after 11 months, of the death of his wife, I think, it will be proper to award damages amounting to Rs. 15,000, for the loss of life of his wife, which resulted into conditions of inconvenience, suffering, shock, derangement in house and the life for a period of nearly 11 months.

Both Sudhakar Kotasthane and Madhya Pradesh State Road Transport Corporation preferred appeals to the High Court from the decision of the Tribunal. The High Court proceeded as follows. The "span of her earning life" was counted as 35 years taking 58 years as the age of superannuation. For the first six years from the date of accident, the High Court took Rs. 200 as the average monthly income, and for the remaining twenty-nine years of service the average income per month was fixed at Rs. 250. On this basis the High Court computed her total earnings to be Rs. 96,000. Giving allowance for her own expenses and also taking into account the promotions and consequently the increased salary she might have earned, the High Court thought that she could have "easily spared" half of this amount for the household and estimated the loss of income on account of her death, in round figures, at Rs. 50,000. The High Court enhanced the compensation accordingly. Regarding Sudhakar's second marriage, the High Court observed :

> But even so, the second marriage cannot be said to be a substitute for the first one. The second wife is not an earning member of the family nor is it shown that Sudhakar has in any way benefited from the second marriage financially. Therefore the financial loss would be there despite the second marriage.

On these findings the High Court allowed the appeal filed by Sudhakar Kotasthane and dismissed that preferred by the Madhya Pradesh State Road Transport Corporation.

3. The extract from the Tribunal's order quoted above suggests that in fixing the quantum of compensation the Tribunal was under the impression that the applicant had made no claim on the ground of pecuniary loss resulting from his wife's death. In this the Tribunal was clearly in error. In paragraph 11 of the claim petition, Rs. 75,000 is claimed as compensation and the paragraph makes it clear that the sum is computed on the deceased's expected earnings. If there were no such claim the Tribunal would have been hardly justified in awarding Rs. 15.000 as damages for the mental shock and inconvenience suffered by the applicant for a period of 11 months only, after which he remarried. The High Court also does not seem to be right in estimating the damage sat Rs. 50,000 in the manner it did. Whether the deceased's average monthly salary is taken to be Rs. 200 or Rs. 250, we find it difficult to agree that only half of that amount would have been sufficient for her monthly expenses till she retired from service, so that the remaining half may be taken as the measure of her husband's monthly loss. It is not impossible that she would have contributed half of her salary to the household, but then it is reasonable to suppose that the husband who was employed at a slightly higher salary would have contributed his share to the common pool which would have been utilised for the lodging and board of both of them. We do not therefore think it is correct to assume that the husband's loss amounted to half the monthly salary the deceased was likely to draw until she retired. If on an average she contributed Rs. 100 every month to the common pool, then his loss would be roughly not more than Rs. 50 a month and assuming she worked till she was 58 years, the total loss would not exceed Rs. 19,000. But in assessing damages certain other factors have to be taken note of which the High Court overlooked, such as the uncertainties of life and the fact of accelerated

payment - that the husband would be getting a lump sum payment which but for his wife's death would have been available to him in driblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors. Some element of conjecture is inevitable in assessing damages, Lord Pearce in Mallet v. Mc Monagle (1970 (AC) HL 1666 (174)) calls it "reasonable prophecy". Taking note of all the relevant factors, the sum of Rs. 15,000 awarded by the Tribunal appears to be a reasonable figure which we do not find any reason to disturb.

4. A method of assessing damages, usually followed in England, as appears from Mallet v. Mc Monagle, is to calculate the net pecuniary loss upon an annual basis and to "arrive the total award by multiplying the figure assessed as the amount of the annual 'dependency' by a number of 'year's purchase'", (p. 178) that is the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand. The husband may not be dependent on the wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar. Here, the lady had 35 years of service before her when she died. We have found that the claimant's loss reasonably works out to Rs. 50 a month i.e. Rs. 600 a year. Keeping in mind all the relevant facts and contingencies and taking 20 as the suitable multiplier, the figure comes to Rs. 12,000. The Tribunal's award cannot therefore be challenged as too low though it was not based on proper grounds. In a decision of the Kerala High Court relied on by the appellant (P. B. Kader V. Thatchamma (AIR 1970 Ker 241 : 1969 Ker lj 491 : ILR (1969) 2 Ker 307 : 1970 Lab IC 1273) to which one of us was a party, the same method of assessing compensation was adopted.

5. The other appeal (C. A. 2255 of 1968) relates to the injury sustained by a boy aged about four years. He suffered compound fracture of his right tibia and fabula lower third near the ankle joint with infection of the wound. Skin-grafting had to be done and the boy had to remand in hospital from June 25 to August 4, 1961. According to the doctor who examined him, the child was likely to develop a permanent limp which might require another operation at the age of 16 years or so. In any case, in the opinion of the doctor the deformity was certain to persist till the boy was 16 years when another operation might remove it. The Tribunal awarded Rs. 10,000 as general damages and Rs. 890 as special damages. The High Court increased the general damages to Rs. 20,000. It appears from the evidence that the boy comes from a well-to-do family. Though the possibility was there of the deformity being removed by surgical operation when he grew up to be 16 years, the other possibility cannot be altogether ruled out. That being the position, we are not inclined to interfere with the sum awarded by the High Court.

6. In the result, appeal 2254 of 1968 is allowed, the judgment of the High Court is set aside and the award of the Tribunal is restored; appeal 2255 of 1968 is dismissed. There will be no order as to costs in either appeal.

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