Union Of India And Ors. vs Viranwali And Ors. on 1 November, 1966

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

Hegde.C.J. (1) Regular First Appeal No.90-D/1956 and 121-D/1956 raise common questions of law and fact. They relate to a common incident that took place on March 16,1952, at about 4 A. M. when railway engine No. 1175 belonging to th (2) Regular First Appeal 121.D of 1956 arises from suit No. 259 of 1956 on the file of the same Judge. That was a suit filed by the widow of Nanoo claiming damages as a result of the accident, referred to already. -In that suit the court below decreed a sum of Bs. 22,500.00 in favour of the plaintiff against the defendants.

(3) The case for the plaintiffs in the two suits was that due to the gross negligence on the part of the servants of the defendants, the accident, in question, took place and, therefore, the defendants were liable to pay damages to the heirs of the deceased persons. The defendants contended that there was no negligence on the part of theif servants. They also pleaded that there was contributory negligenee on the part of the deceased persons. They further pleaded that the amount claimed as damages was excessive.

(4) On the pleadings, the following issues were framed : (1)Whether the accident arose on account of the negligence of the employees of the defendants ? (2) Whether the driver had a motor driving licence ? If not, to what effect ? (8) Whether the driver was guilty of contributory negligence ? If so, to what effect ? (4) Whether the plaintiffs are entitled to damages and compesation ? If so to what amount ? (5) Whether valid notice under section 80 Civil Procedure Code, was served upon the defendants ? (6) Relief.

The court below found against the defendants on all the issues Nos. 1 to 5. There is satisfactory evidence on record to show that at the time of the accident the gate of the level crossing was open ; there was no light fixed on the gate ; there was also no light in the engine. On these points we have the evidence of Mansa Ram and Hazara Singh. Their evidence has not been in any manner damaged in crossexamination. That evidence has been accepted by the Court below. We see no reason to differ from the conclusion of the Court below on that point.

(5) There is evidence to show that deceased Tirath Singh had a driving licence. The defendants have failed to establish that the driver of the lory was guilty of contributory negligence.' The contention that there was no valid notice under section 80, Code of Civil Procedure, was not pressed before us.

(6) The only question on which elaborate arguments were advanced before us, was the one relating to the quantum of damages. Deceased Tirath Singh was aged 30 years at the time of his death. It is

satisfactorily proved by the evidence of Public Witness s. 3 and 6 that at the time of his death, he was getting a monthly salary of Rs. 150.00. That evidence was neither challenged in cross examination nor rebutted by any other evidence. The deceased left behind him his young widow and four minor children. They were all depending on him. The court below came to the conclusion that in the normal course he could have been expected to live till the age of 55 years. It accordingly fixed the damages at Rs. 45,000.00.

(7) Deceased Nanoo was also about 30 years of age at the time of his death. He was a cooli by profession. Evidence has been adduced to show that at the time of his death, he was earning Rs. 2.50 P. to Rs. 3.00 per day. The trial Court came to the conclusion that his average income per month could be estimated at Rs. 751.00. The finding of the trial . Court on this point is supported by the evidence on record. There is no counter evidence. He also left behind his young widow and four minor children. In that case the Court below decreed a sum of Rs. 22,500.00 as damages.

(8) The learned counsel for the appellants attacked the decision of the court below on the question of quantum of damages on two different grounds. He, firstly, contended that the court below was wrong in fixing the life expectation at 55 years. According to him, it should have fixed the same at 45 years. His second contention was that in computing the monthly income of the deceased persons, the court below failed to take into consideration the expenses that the deceased persons would have incurred on themselves, the possibility of their widows remarrying and the circumstances that the dependents of the deceased are getting lump sum payments. We are unable to agree with the learned counsel for the appellants on any of these contentions.

(9) In recent years longevity has appreciably increased in this country. On the evidence on record, it is reasonable to conclude that the deceased persons were enjoying normal health. It is not alleged that they were suffering from any disease. They were young persons. Therefore it was reasonable for the court below to .conclude that they could have lived uptil the age of 55 years. In matters like this, there can be no hard and fast rule. It is essentially a question of estimation. But that estimation must be a judical one taking into consideration all the facts and circumstances of the case.

(10) Now coming to the question of computation of the monthly income of the deceased persons. It is true as contended by the learned counsel for the appellants, that the court below did not take into consideration the expenses that the deceased persons would have had to incur on themselves, had they continued to live. But then the court below also did not take into consideration the potentiality of the deceased persons to earn more income, in the years to come. In the normal course, they would have earned much more than what they were earning at the time of -their death.

(11) It is nobody's case that the widows of the deceased have remarried. Their remarriage hereafter is very unlikely. That apart, the deceased persons had left behind them several other dependants.

(12) The benefit of getting a lump sum payment is offset by the increase in prices and the progressive decrease in the value of the rupee. Taking all the facts of the case into consideration, we do not think that the damages fixed by the court below can be considered as unreasonably excessive. As observed by the Punjab High Court in Vanguard Fire and General lnsurance Company, Limited v.

Sarla Devi and others "there is no quantitative scale of computing compensation for damages resulting from death and courts of law must in the circumstances of each case exercise their discretion to arrive at a reasonable and fair figure. The task of the court is to estimate as best as it can a capital sum which will represent a fair compensation for the loss of the actual pecuniary benefit which the defendants might reasonably have expected to enjoy if the deceased had not been killed." In so doing, estimates are likely to differ and so long as the estimate made by the trial court cannot be said to be unreasonable, leven though a different estimate is possible, this court will not interfere.

(13) For the reasons, mentioned above, these appeals fail and are dismissed. The counsel for the respondents are absent. Hence there would be no orders as to costs.Dua, J.-1 agree.