Manjusri Raha & Ors Etc vs B.L. Gupta & Ors. Etc on 9 February, 1977

Equivalent citations: 1977 AIR 1158, 1977 SCR (2) 944, AIR 1977 SUPREME COURT 1158, 1977 2 SCC 174, 1977 2 SCR 944, 1977 TAC 297, 1977 ACJ 134, 1977 U J (SC) 212

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, V.R. Krishnaiyer

PETITIONER:
MANJUSRI RAHA & ORS ETC.

Vs.

RESPONDENT:
B.L. GUPTA & ORS. ETC.

DATE OF JUDGMENT09/02/1977

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KRISHNAIYER, V.R.

CITATION:
1977 AIR 1158 1977 SCR (2) 944
1977 SCC (2) 174
CITATOR INFO :
RF 1981 SC2059 (28)
RF 1987 SC2158 (6)
RF 1991 SC1769 (6)
F 1992 SC1261 (7)

ACT:
Motor Vehicles Act 1939 Sec. 95(2)(d)--Sec. 110A--Principles to determine compensation payable for death in a bus accident--Increments and pensionary benefits, whether to be taken into account.

HEADNOTE:
Satindra Nath Raha and Uma Shankar Shastri were travelling by a bus owned by Gupta of M.P. Speedways Company. They were travelling from Bhind to Gwalior. On the high

way, a bus owned by Bhuta came from the opposite direction. On account of negligence of drivers of both the buses there was a head-on collision of the two buses, as a consequence of which Raha and Shastri sustained fatal injuries to which they succumbed on the same day in the hospital. Widow of Raha claimed a compensation of Rs. 3,00,000/- under s. 110 of the Motor Vehicles Act and Mrs. Shastri claimed a sum of Rs. 1.20,000/- as compensation. The Claims Tribunal decreed the claim of Mrs. Raha to the extent of Rs. 60,000/- and of Mrs. Shastri to the extent of Rs. 40,000/-. The compensation awarded to Mrs. Raha is on the basis of the salary which Mr. Raha would have earned upto the age of 55 years after deducting half the salary. The quantum awarded by the Tribunal was upheld by the High Court. Gupta and Mrs. Raha field the present appeals in this Court. Gupta contended that the compensation awarded was very excessive and Mrs. Raha contended that the compensation granted was grossly inadequate and should be enhanced.

A

Allowing the appeal filed by Mrs. Raha and dismissing the appeal filed by Gupta,

HELD: 1. The contention of Gupta that he should not be made liable to pay the compensation since no negligence was alleged against the driver Ram Swarup negatived. Although the plaint is loosely drafted but it clearly contains the relief of compensation against Gupta and Ram Swarup, the driver. Pleadings have to be interpreted not with formalistic rigour but with latitude or awareness of low legal literacy of poor people. The Claims Tribunal and the High Court overlooked two important and vital considerations. Firstly the increments which Mr. Raha would have earned while reaching the maximum of his grade long before his retirement and secondly the pensionary benefits which he would have obtained had he retired. It would be reasonable to expect that if the deceased had not died due to the accident he would have lived at least upto the age of 65 years. The Court, therefore, enhanced the compensation of Rs. 60,000/- to Rs. 1,00,000/-. [948 F, G, 949A-B, 950A-B]

2. It is unfortunate that section 95(2)(d) of the Motor Vehicles Act restricts the liability of the Insurance Companies to Rs. 2,000/- only in case of a third party. The court suggested that the Legislature should increase the liability of the Insurance company. The court observed that it was anamolous that if a passenger dies in a plane accident he gets the compensation of Rs. 1 lac and a person who dies in the road accident should get only Rs. 2,000/-. [946 D-E]

3. Expressing its concern for the need for creating no fault liability by a suitable legislation, the Court observed:

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
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torts based on no-fault needs reforms. Where the social need of the hour requires that precious human lives lost in motor accidents leaving a trial 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. Our .country can iII-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 a suitable provision so as to pay adequate compensation by property evaluating the precious life of a citizen in its true perspective rather than devaluating human lives on the basis of an artificial mathematical formula. [916 C--950 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 231.0 & 1826 of 1968.

(From the Judgment and Decree dated the 30th August, 1967 of the Madhya Pradesh High Court in Misc. First Appeals Nos. 219 and 220 of 1965) and (From the Judgment and Decree dated the 30th August, 1967 of the Madhya Pradesh.High Court in Misc. First Appeal No. 203 of 1965).

G.L. Sanghi, Talat A nsari, R.K. Sanghi and K.J. John.--In CAs. Nos. 132/69 & 1826/68 for the Appellant in 132 & in 1826/ 68.

G.S. Chatterjee & D.P. Mukherjee.--for Respondents 1-3.

1. N. Shroff & H.S. Parihar--for Respondent No. 8. H.K. Puri and A.G. Ratnaparkhi.--for Respondent No. 6 for Respondents 9 to 11.

G.S. Chatterjee & D.P. Mukherjee, in CA No. 2310 of 1968 for the appellants.

G.S. Sanghi, Talat Ansari, R.K. Sanghi and K.J.John for respondent No. 1.

H.S. Parihar & 1. N. Shroff for respondent No. 3. H.K. Puri for respondent No. 4.

The Judgment of the Court was delivered by FAZAL ALI, J.--With the emergence of an ultra-moderd age which has led to strides of progress in all spheres of tile, we have switched from fast to faster vehicular traffic which has come as a has boon to many, though some times in the case of some it has also proved to be a misfortune. Such are the cased 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 iII-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 lawmakers 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 s. 110 of the Motor Vehicles Act provides for the constitution of Claims Tribunals for determining the compensation payable, s. 110-A provides for the procedure and circumstances under which the family of a victim of a motor accident can get compensation and lays down the var- ious 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, s. 95(2)(d) of the Motor Vehicles Act limits the compensation to be paid by an Insurance Company to Rs. 2,000/- 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.

With this little preface we now take up the facts in the appeals by certificate filed by B.L. Gupta and Smt. Manjus- hri 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 No. 2310 of 1968 will, in short, be referred to hereafter aS "Raha", whereas respond- ents Oriental Fire & General Insurance Company would be referred to as "Oriental Company" and the New India Insur- ance 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 circum- stances.

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 s. 110-A 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-4397 (owned by Gupta of the M.P. Speedways Company) from Bhind to TM Gwali- or. 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 conse- quence 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. 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 flied by Shastri. Against the decision the Claims Tribunal, Gupta field Miscellaneous First Appeal No. 203 of 1965 against Bhuta, Raha and others which was dismissed by the High Court. Civil Appeals Nos. 1826 of 1968 and 132 of 1969 in this Court arise out of the aforesaid appeal before the High Court. Miscellaneous First Appeal No. 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 flied an appeal in the High Court being Miscellaneous First Appeal No. 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 appel- lant Bhuta. Miscellaneous First Appeal No. 222 of 1965 was flied before the High Court by Oriental Company against Shastri but that was also dismissed. Similarly Miscellane- ous First. Appeal No. 223 of 1965 was flied 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 No. 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.

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, there- fore,

the appeal should be decreed in terms of the compro- mise. It was further contended that even if the amount awarded by the Claims Tribunal to Raha is enhanced that should be payable by 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.

Finally, it was contended that as there was no allega- tion of negligence against Ram Swaroop the driver of the M.P. Speedways Company the High Court ought not to have decreed the c1aim 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 dearly show that Ram Swaroop the driver of the M.P. Speedways Company was both rash and negligent. Pleadings have to be interpreted not with forma- listie 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 circum- stances.

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 perus- al 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 Satyen-

dra 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 considera- tions. In the first place, while the admitted position was that the deceased Satyendra Nath Raha was working in the grade of Rs 590-30-830-35-900 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 incometax 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 to 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 perma- nent employee, the amount taken into account by the Compen- sation Tribunal was correct. This is, however, not a con- sideration 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, there- fore, 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.

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 super- annuation, 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 certif- icate 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 aver- age 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 over- looking these two important aspects which we have dis- cussed.

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

While our Legislature has made laws to cover every possi- ble situation, yet it is well nigh impossible to make provi- sions 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 disas- ter 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 par- ticularly 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 occupa- tion 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 Legis- lature should make a suitable provision so as to pay ade- quate compensation by properly evaluating the. previous life of a citizen in its true perspective rather than deval- uing 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 com- pensation 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 par- ticular conveyance and the value of his life is considerably reduced if 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 s. 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 s. 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 observa- tions of the highest Court of the country do not become a mere pious wish.

In M/s. Sheikhupura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd. (1) 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 s. 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 acci- dents.

In P.B. Kader & Ors. v. Thatcharoma and Ors.(2) 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. 2,000/-, 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. 2,000/- per individual, in- volved in an accident, to make it more realis- tic and humane, but that is a matter for the legislature; and the observation that I have made is calculated to remind the lawmakers that humanism is the basis of law and justice."

We find ourselves in complete agreement with the obser- vations 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 statute like the Motor Vehicles Act in regu- lating compensation payable by Insurance Companies to vic- tims 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.

The result is that Civil Appeals 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 0.23 r. 3 of the Code of Civil Procedure. In the circum- stances of the case, the parties will bear their own costs in this Court.

P.H.P. C.A. 1826 of 1968 and 132 of 1969 dismissed. C.A. No. 2310 of 1968 allowed.

(1) A.I.R 1971 S.C. 1624.

(2) A.I.R. 1970 Kerala 241.