

Rajasthan High Court

Chhagan Kanwar And Ors. vs Pep Singh And Ors. on 19 January, 1990

Equivalent citations: 1991 ACJ 162, 1990 (2) WLN 495

Author: M Chandra

Bench: M Chandra

JUDGMENT Milap Chandra, J.

1. This appeal has been filed by the claimants under Section 110-D, Motor Vehicles Act, 1939 (hereinafter to be called as 'the Act') for the enhancement of the amount of compensation against the judgment dated July 23, 1988 passed by the Motor Accidents Claims Tribunal, Jodhpur, awarding Rs. 70,000/- as compensation. The facts of the case giving rise to this appeal may be summarised thus.

2. On December 26, 1984 at about 4.30 p.m., the deceased Gangadan was returning on his moped from Diesel Training School, Northern Railway, Bhagat Ki Kothi, Jodhpur. He was going on his correct side of the road. The truck No. GTY 4359 dashed him from his back side. As a result thereof, he sustained serious injuries. His colleagues immediately shifted him to the Railway Hospital, Jodhpur. Due to his serious condition, he was referred to Mahatma Gandhi Hospital, Jodhpur. Despite best efforts of the doctors, he could not be saved and died on December 29, 1984. The appellants filed a petition under Section 110-A of the Act claiming Rs. 4,00,000/- as compensation. The respondents filed their written statements traversing all the allegations of the claim petition. After framing necessary issues and recording the evidence of the parties, the Tribunal awarded compensation to the tune of Rs. 70,000/- with interest at the rate of 12 per cent per annum, against the owner, insurer and driver of the said truck.

3. It has been contended by the learned counsel for the appellants that the learned Tribunal seriously erred to hold that the deceased Gangadan was 45 years of age at the time of the accident and it is well proved from the statement of the widow Chhagan Kanwar, PW1 and the post-mortem report Exh. 9 that his age at the time of accident was 41 years. He also contended that multiple of atleast 20 should have been applied in calculating the amount of compensation. He further contended that the learned Tribunal grossly erred in holding that the deceased Gangadan used to contribute Rs. 500/- per month to the claimants, the learned Tribunal has seriously erred in not awarding amount spent on the treatment of the deceased, for the loss occasioned by the damage of the moped and also for the pain and sufferings suffered by the deceased during three days he remained alive after the accident. He lastly contended that the Tribunal also seriously erred to deduct Rs. 200/- per month from the amount of monthly dependency of Rs. 700/- on account of the grant of pension to the widow Chhagan Kanwar and employment of his eldest son Vimaldan. He relied upon Arunaben v. Mehmoodbhai Imamali Kaji 1983 ACJ 409 (Gujarat), State of Himachal Pradesh through Secretary (PWD) v. Chaina Ram 1989 ACJ 13 (HP), N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC), Prem Kanwar v. Rajasthan State Road Trans. Corporation 1988 ACJ 65 (Rajasthan), Rajasthan State Road Trans. Corporation v. Kistoori Devi 1986 ACJ 960 (Rajasthan), Jyotsna Dey v. State of Assam 1987 ACJ 172 (SC) and Sohan Lal v. Bal Swaroop Bal Bhatnagar 1987 ACJ 113 (Rajasthan).

4. In reply, it has been contended by the learned counsel for the National Insurance Company Ltd., respondent No. 4, that the sons and daughters of the deceased are not entitled to any amount as consortium and the widow of the deceased is only entitled to compensation under this head. He further contended that no amount under the head of medical expenses has been claimed in the claim petition. He lastly contended that no amount is admissible as compensation for performing the last rites of the deceased.

5. The first point for consideration in this appeal is about the age of the deceased Gangadan on the day of the accident. His widow Chhagan Kanwar, PW 1, has categorically stated in her examination-in-chief that her husband Gangadan was 40 years old on the day of the accident. Dr. M.P. Joshi, PW 4, performed the post-mortem examination on the dead body of the deceased Gangadan and he had mentioned the age of the deceased as 41 years in his post-mortem report Exh. 9. Both these witnesses have not been cross-examined on this point. On the basis of the statement of Jagdish, PW 2, the learned Tribunal has held that the age of the deceased Gangadan was not less than 45 years on the date of the occurrence. The learned Tribunal should have preferred the statement of the widow Chhagan Kanwar, PW 1, instead of Jagdish, PW 2, particularly when the postmortem report Exh. 9 supports her. It was open to the non-petitioners to have called the service record of the deceased from his office. Admittedly, no such step was taken by any of the respondents. On the basis of the material on record, it is difficult to endorse the views of the Tribunal that Gangadan was 45 years of age on the date of the accident. It is well proved from the evidence on record that he was 41 years of age on the date of the occurrence.

6. The next question for consideration is whether under the facts and circumstances of the case, the Tribunal was justified to apply the multiplier of 10. The claimant Chhagan Kanwar, PW 1, has stated on oath that her grandfather-in-law died at the age of 80 years and the age of her father-in-law is 72 years. She has not been cross-examined on this point. If the deceased Gangadan would not have died in accident, he might have also attained the age of 70 years atleast. It is the admitted case of the parties that deceased was in the railway service on the date of the accident and he would have retired at the age of 58 years. As such he would have drawn his emoluments from the Railway Department for 17 years more if he would not have died in the accident. After retirement, he would have drawn pension and would have done some work or service. There is nothing on the record to indicate that he was not enjoying good health and would not have been able to do any work or service after his retirement. Under these facts and circumstances, the Tribunal should have applied the multiplier of 17 atleast.

7. The next question is about the total emoluments which were being drawn by Gangadan from the Railways. It is well proved from the pay certificate Exh. 10 that he was drawing total emoluments of Rs. 1,144.50 per month. This amount includes Rs. 100.50 as kilometre allowance. It is difficult to believe the statement of the claimant Chhagan Kanwar, PW 1, that besides this amount he was also drawing Rs. 300/- to Rs. 400/- as mileage allowance and his total monthly emoluments were Rs. 1,500/- to Rs. 1,600/-. It is also stated in the pay certificate Exh. 10 that Rs. 295/- were used to be got deducted by the deceased towards the provident fund loan, CCS loan, electricity and water, house rent, insurance, C.P.F. etc. He was thus taking Rs. 850/- per month to his home. In the cross-examination, Chhagan Kanwar, PW 1, has disclosed that her husband used to smoke bidi and

drink tea and his personal expenses were Rs. 100/- to Rs. 150/- per month. Some amounts were also being spent on his clothes and food. The Tribunal has deducted Rs. 150/- only. It should be Rs. 250/-. Thus the deceased was contributing Rs. 600/- (Rs. 850/- - Rs. 250/-) per month to his family.

8. The learned Tribunal has deducted Rs. 200/- per month from the amount of dependency of Rs. 700/- on account of pension and the employment of the eldest son Vimaldan. No deduction should have been made on these counts. It has been observed in *N. Sivammal v. Managing Director, Pandian Roadways Corporation* 1985 ACJ 75 (SC), para 5, as follows:

The High Court evaluated the monetary benefits of pension and reduced the amount of compensation by Rs. 10,000/-. We are unable to appreciate this reduction. We find no justification for it.

9. It has been observed in *Arunaben v. Mehmoodbhai Imamali Kaji* 1983 ACJ 409 (Gujarat), at page 416, para 18, as follows:

No decision of an Indian court having a bearing on the point under consideration has been brought to our notice, but having regard to the view which prevails in foreign countries in similar jurisdiction, the proper principle to apply would appear to be that in determining the pecuniary loss to the dependants, no deduction should be made for the earning capacity or the actual earnings of the widow arising from her gainful employment taken up after the accidental death of her husband, because such income is not a benefit in consequence of the death but is the result of her own labour.

10. The Tribunal has awarded only Rs. 5,000/- as consortium to the widow Chhagan Kanwar. It is clear from her statement that her age at the time of the fatal accident of her husband was 39 years only. She has to pass a long period as a widow. The amount of Rs. 5,000/- seems to be inadequate. It deserves to be enhanced to Rs. 10,000/-.

11. The Tribunal has not awarded any amount under the head of loss of love and affection of children and parents. It has been held in *Rajasthan State Road Trans. Corporation v. Kistoori Devi* 1986 ACJ 960 (Rajasthan), that the Tribunal is entitled to grant compensation on the above head. The Tribunal should have at least allowed Rs. 10,000/- under this head.

12. The Tribunal has also not awarded any amount for the pain and sufferings suffered by the deceased Gangadan from the time of the accident till his death. The accident took place on December 26, 1984 and he died on 29th December, 1984. His widow Chhagan Kanwar, PW 1, has categorically stated on oath that he was writhing due to pain and suffering. The Tribunal should have awarded at least Rs. 5,000/- under this head.

13. The Tribunal has not rightly awarded any amount incurred in treatment of the deceased Gangadan on the ground that it was reimbursible as he was a railway employee.

14. The learned Tribunal has rightly not allowed any compensation towards the damage of the moped for want of definite evidence. Chhagan Kanwar, PW 1, has deposed that her husband

purchased his moped for Rs. 7,000/- and she sold it for Rs. 5,000/-. She also said that she sold it for Rs. 2,000/-.

15. The Tribunal has awarded Rs. 5,000/- towards the expenses incurred in performing the last rites. This amount is not admissible as in the natural death these expenses would have also been incurred.

16. In view of the aforesaid discussion, the claimants-appellants are entitled to get the following amounts:

(1) Loss of dependency benefits/economic loss (600 X 12 X 17)	Rs. 1,22,400/-
(2) Consortium	Rs. 10,000/-
(3) Love and affection of children and parents	Rs. 10,000/-
(4) Pain and suffering	Rs. 5,000/-
Total	Rs. 1,47,400/-

The claimants have already obtained Rs. 15,000/- under Section 92-A of the Act There rem

17. Consequently, the appeal is partly allowed. The amount of compensation is enhanced from Rs. 70,000/- to Rs. 1,47,400/-. The claimants are entitled to get interest at the rate of 12 per cent from May 13, 1985 to the date of payment.

18. The aforesaid amount of Rs. 1,32,400/- will be distributed amongst the claimants as follows:

Three sons	Rs. 12,000/- (each)
Three daughters (each)	Rs. 12,000/-
Mother	Rs. 12,000/-
Widow	Rs. 45,000/-
Father	Rs. 3,400/-
Total	Rs. 1,32,400/-

All claimants except the father will deposit the aforesaid amounts in fixed deposit scheme of any scheduled bank for atleast 6 years. The claimants may draw the interest regularly as permitted by the bank. They will not pledge or transfer these fixed deposit receipts. The appellant No. 1 Chhagan Kanwar will obtain fixed deposit receipts in the names of the minor claimants. For the marriage of

the son or daughter, the mother Chhagan Kanwar may draw amount from the fixed deposit with the permission of the Tribunal.