Before V.K. Bali, J.

RITA SHARMA & OTHERS,—*Appellants*

versus

PAN CHAND & OTHERS,—*Respondents*

F.A.O. No. 419 *of* 86

13th May, 1997

Motor Vehicles Act, 1988—Section 110-A—Employee earning Rs. 2,200 P.M.—Death in motor accident—Dependency—Determination of—Deceased aged 40 years—Multiplier of 18 to be applied.

Held, that the formula of deleting 1/3rd of income of an employee and then working out dependency in view of this Court holds no more good in the present scenerio. No. individual can ever think of spending on himself but for the amount that is required to sustain himself, unless he first satisfies the needs of his family. It is true that an employee may be spending all that is required for him to go to office and to sustain himself but that in no way can go to extent of his 1/3rd of his income.

(Para 7)

Further held, that considering the fact that deceased was to look after his three minor children and his parents, this Court is of the firm view that the deceased could not at all be spending anything more than Rs. 200 on himself. The fact that the deceased would have earned promotion and would have better future and better emoluments in store, cannot also be lost sight of.

He was only 40 years when he died and would have certainly served for 18 years more. Considering the totality of the facts and circumstances of this case, the dependency of the claimants has to be worked at Rs. 2,400 per month. By applying the multiplier of 18, as the learned Tribunal applied, the compensation works out to Rs. 4,60,000 to which the appellants are entitled. They shall also be entitled to 12% interest from the date they filed application before the Motor Accident Claims Tribunal.

(Para 8)

Mr. Rajesh Garg, Advocate, *for the Appellants.*

Mr. Mahraj Baksh Singh, Advocate, *for the Respondents.*

JUDGEMENT

V.K. Bali, J (Oral).

(1) Rita Sharma, a widow with three minors aged 6, 4½ and 1½ years as also dependant parents of V.K. Sharma, a Junior Engineer employed in Rashtriya Chemical and Fertilizer Limited, Bombay had filed the petition under Section 110-A of the Motor Vehicles Act claiming an amount of Rs. 6,00,000 on account of death of Shri V.K. Sharma who on the fateful day was riding Motor-cycle bearing No. HPG-1269. The Motor Accidents Claims Tribunal,— *vide* its order dated 30th January, 1986 allowed compensation to the tune of Rs. 1,12,200. The claimant—appellants have preferred this appeal against the inadequate compensation granted to them by grossly under assessing the pendency by the Motor Accidents Claims Tribunal. The MACT also held that accident took place due to the contributor negligence of the offending vehicle i.e. Motor cycle No. PUD-789 and the deceased who was driving Motor Cycle No. HPG-1269. This finding is also under challange in this appeal.

(2) It was *inter alia* pleaded by the claimants in the petition under Section 110-A of the Motor Vehicles Act that on 16th November, 1984 at about 11.00 a.m., V.K. Sharma (deceased) was coming from Una Nangal Road for proceeding towards Nangal Township on his Motor cycle No. HPG-1269 at at normal speed but when he was just passing through the crossing for going towards township, another Motor cycle No. PUD-789 driven by Ram Sarup came at a very high speed from the side of Geeta Mandir Road Nangal and the driver of the said Motor cycle hit the Motor cycle driven By V.K. Sharma. As a rusult of which, later sustained multiple injuries and was then removed to the PGI and scummbed to the injuries on the next day i.e. 17th November, 1984. V.K. Sharma was junior Engineer employed in Rashtriya Chemical & Fertilizer Limited, Bombay and was drawing Rs. 3,000 per month.

(3) Pursuant to the process, respondent Nos. 1 and 2 filed written statement, obviously denying their liability. They pleaded that the deceased was the author of the accident himself. Respondent No. 3 New India Assurance Company also contested the claim. It was pleaded that Motor Cycle No. PUD-749 was not insured. In reply filed on 23rd July, 1984 rectification of the number of the Motor cycle had been allowed by the Tribunal as the omission, in view of the Tribunal, had crept inadvertantly. On the pleadings

of the parties, the Tribunal framed the following issues:—

1. Whether the accident in question in which Vinod Kumar sustained fatal injuries, was the result of rash and negligent driving of Motor cycle No. PUD-789 by its driver Ram Sarup respondent No. 2 ? OPP
2. Whether the claimants are entitled to compensation? If so, to what amount and from whom? OPP.
3. Relief.

While determining issue No. 1, the Tribunal recorded its findings that accident was the result of (copy not read) and V.K. Sharma (deceased). While holding so, the Tribunal held that the claimants were entitled to 50% damage/compensation. Under issue No. 2, the Tribunal after returning finding that deceased was earning Rs. 2,200 per month worked out dependency of the claimants at the rate of Rs. 1,450 per month and it was held that an amount of Rs. 750 must have been spent by the deceased on himself. By applying multiplies of 16, the Tribunal awarded compensation to the tune of Rs. 1,12,200.

(4) Learned counsel appearing on behalf of the appellants vehemently contends that the learned Tribunal has clearly erred while holding that this was a case of contributory negligence. He further contends that by no logic could it be held that the deceased was spending an amount of Rs. 750 upon himself and therefore, the dependency has been held to be on a very low side.

(5) After hearing the learned counsel for the parties and after going through the record of the case, this Court is of the view that there is merit in both the points raised by the learned counsel representing the appellants. Two eye witnesses namely Ram Parkash and Basant Kumar were examined as PW1 and PW2 respectively. Both of them in no uncertain terms made Ram Sarup, driver of the offending vehicle liable for the accident. It is clear from their statements that Ram Sarup, driver of Motor cycle no. PUD-789 was driving his Motor cycle at a very high speed whereas the driver of other vehicle i.e. one driven by the deceased was at a low speed. It is also well made out from their statements that so for as deceased is concerned, he was on the main road whereas Motor cycle of Ram Sarup had entered the main road from Geeta Mandir road. Even Ram Sarup when he appeared as witness stated

> "The other Motor cyclist was coming from Una road, Geeta Mandir Road merges in the Una road. The drums had

been placed in that crossing to regulate the traffic at the time of accident."

It could not be disputed before this Court that the Traffic Rules require a person entering the main road to give pass to a vehicle running on the main road. The fact that Ram Sarup had entered the main road from Link road and consequences thereof were not noticed by the Tribunal. The fact that the accident had taken place at the crossing and that no case was registered against Ram Sarup—Respondent No. 2, was of no consequence in the light of the evidence lead before the Tribunal. In so far as the registration of the case is concerned, it requires to be mentioned here that even though no case was registered against Ram Sarup and the case was registered against the deceased, the same was lateron cancelled.

(6) The report was lodged by driver of some Jeep, certified copy of which was placed on the records as Exhibit RW3/A wherein there was recital that Vinod Kumar Sharma was coming at a fast speed whereas the other Motor cycle too was coming from the other side and both of them collided on the crossing. During cross-examination, RW3 stated that the said case was cancelled being untraced. he further deposed that the said word 'untraced' had then been deleted and instead word 'cancelled' was recorded. The reason assigned by him was that the information about this case was feeded in the computer to detect its correctness. He further deposed that the said report had not been received so far and as such it was not persued and was cancelled. If the police itself was of the view that there is no truth in the First Information Report stated to have been recorded on the basis of the statement of the Jeep Driver, the same could not be taken into consideration for holding this case to be of contributory negligence. Looked from any angle, this Court is of the view that the learned Motor Accidents claims Tribunal erred by holding the case to be of contributory negligence.

(7) The deceased was 40 years of age and would have earned being in service atleast upto the age of 58 or 60 years i.e. upto the date of superannuation. The Motor Accident Claims Tribunal in view of this Court clearly erred in holding that the deceased must be spending an amount of Rs. 750 on himself. No employee much less a Junior Engineer can earn enough to spend as much as 1/3rd of his income on himself particularly when he is to look after his family, in the present case a wife and three minor children. Running of the kitchen and spending for essential items of life almost

exhausts the salary of any employee in this country. "The formula of deleting 1/3rd of income of an employee and then working out dependency in view of this Court holds no more good in the present scenerio. No individual can ever think of spending on himself but for the amount that is required to sustain himself, unless he first satisfies the needs of his family. It is true that an employee may be spending all that is required for him to go to office and as mentioned above to sustain himself but that in no way can go to extent of his 1/3rd of his income."

(8) At this stage Mr. Maharaj Bakhsh Singh states that the widow of the deceased herself stated in cross-examination that her husband used to give her Rs. 1,500 for running house hold expenses. However, it is no where made out from the statement of the widow that her husband was not spending anything and that to run the household Rs. 1,500 were enough. If, therefore, her husband was giving her Rs. 1,500 that could well be only for spending for the items which needed to be purchased when the husband was not available. Considering the fact that deceased was to look after his three minor children and his parents, this Court is of the firm view that the deceased could not at all be spending anything more than Rs. 200 on himself. The fact that the deceased would have earned promotion and would have better future and better emoluments in store, cannot also be lost sight of. He was only 40 years when he died and would have certainly served for 18 years more. Considering the totality of the facts and circumstances of this case, the dependency of the claimants has to be worked at Rs. 2,400 per month. By applying the multiplier of 18, as the learned Tribunal applied, the compensation works out of Rs. 4,60,000 to which the appellants are entitled. They shall also be entitled to 12% interest from the date they filed application before the Motor Accident Claims Tribunal.

(9) The order of the Motor Accident Claims Tribunal is modified to the extent indicated above. Present appeal is accordingly allowed. The claimants shall be entitled to the amount of compensation in the same proportion as held by the Motor Accident Claims Tribunal. No order as to costs.

S.C.K.