
Before G.S. Singhvi and M.L. Singhal, JJ

SUNDER MOHAN MATHUR, – Appellant

versus

AJIT SINGH, – Respondents

LPA 1729 of 1989

16th September, 1997

Motor Vehicles Act (IV of 1989)-S.110-B-Deceased aged 26 years-Bachelor-Supporting father and unmarried sister-Earning Rs. 750 per month – Rs. 75,000 as compensation assessed.

Held, that Nagesh Mathur was earning Rs. 750 per month. He was 26 years old. He was maintaining his unmarried sister Kumari Dheera Mathur and his father aged 55 years. In India setting sons do contribute towards the marriages of their sisters. If not more, he must have been contributing towards his father's and sister's maintenance and marriage to the tune of Rs. 400-500 p.m. Going by this estimate, he would have contributed Rs. 75,000 towards his father's and sister's maintenance and sister's marriage over the years.

(Para 12)

Further held, that in our social set up even if a sister is married, a brother has to contribute towards her on occasion of birth of some child to her or the marriage of her child or the christening ceremony of her child or the like. In our opinion, Sunder Mohan Mathur should have been awarded, if not more, atleast Rs.75,000 as compensation for the untimely demise of his son Nagesh Mathur at a young age of 26 years. On this amount of compensation, we award 12 per cent per annum as interest payable with effect from the date of claim application till realisation.

Motor Vehicles Act (IV of 1939)–S. 110-B–Rs. 10,000 given to the petitioner—claimant by employer as *ex-gratia* payment on account of loss of son in view of provisions of Workman's Compensation Act – Unjust to order deduction of said amount from the amount of compensation.

Held, that Rs. 10,000/- was given by the employer to Shri Sunder Mohan Mathur by way of *ex-gratia* payment which was admissible to him on account of the loss of his son in motor vehicle accident in view of the provisions of Workman Compensation Act. Out of this amount of Rs. 75,000 of compensation, we do not order deduction of Rs. 10,000 which had been unjustly ordered by the learned Single Judge.

(Para 12)

Nemo, for the appellant

Nemo, for the respondent

JUDGMENT

M.L. Singhal, J.

(1) This is Letters Patent Appeal against the judgment passed by learned Single Judge of this Court dated 21st July, 1989 in FAO No. 1175 of 1985

titled Sunder Mohan Mathur—appellant v. Ajit Singh and another, whereby he ordered the award of Rs. 40,000 as compensation to Shri Sunder Mohan Mathur on account of the death of his son Nagesh Mathur aged 26 years in a motor vehicle accident that took place on 4th April, 1983 at 3.30 P.M. at the turning near Badkhal Lake on Delhi-Gurgaon road.

(2) Facts of the case are as follows:—

(3) Nagesh Mathur was employed with M/s Eicher Goodearth Limited, 120SIAN' Second Floor, Nehru Place, New Delhi as Technical Assistant. His duty was to supervise, check and inspect the performance of tractor manufactured by respondent no. 2 at Faridabad on the instructions of his employer and in the discharge of his duties, on 4th April, 1983 he was deputed to check the performance of tractor No. HRC-170-C being driven by Ajit Singh driver of that tractor employed by respondent no. 2. This driver was driving the said tractor with trolley loaded with earth. Its performance was to be checked by Nagesh Mathur in the capacity of Technical Assistant. He was sitting on the trolley of the tractor and watching its performance at about 3.30 P.M. on 4th April, 1983 when tractor was being driven by Ajit Singh as instructed by the employer (respondent no. 2). Ajit Singh was driving the tractor redlessly, negligently and rashly at uncontrollable speed without taking any precautions. Due to rash and negligent driving, the driver lost control and the tractor and trolley over-turned when the tractor took turn near turning of Badkhal Lake at Gurgaon-Delhi road. Nagesh Mathur fell from the tractor trolley towards the right side of the road and sustain injuries. His body got buried in the piles of earth. He died due to suffocation because of fall of earth on him. He was born in November 1958. He passed Intermediate (Science) in the year 1977 from Government Jubilee Inter College, Lucknow. After Inter (Science) he qualified three years in Automobiles Engineering in the year 1980 from Government Polytechnic, Lucknow. He had been working and earning right since the year 1980 after obtaining diploma certificate. He also worked in Western India Industries, 17, Nav Yug Market, Ghaziabad as Technical Assistant on monthly salary of Rs. 500. He was thereafter selected by respondent no. 2 at a salary of Rs. 750 per month. He was given rise of Rs. 250 on his previous salary on account of his past experience. Had his life not been cut short, he would have served his family for a long time. He was unmarried. He was the sole bread-winner of the family including his father. Besides his father, his sister was also dependent upon him. Nagesh Mathur's sister Kumari Dheera Mathur was of marriageable age. He was parting Rs. 500 to the claimant. He would have gone upto the rank of General Manager of the company in the technical side had he remained alive. Apart from that he was deprived of the love and affection of his son. Loss of his son is mental agony to him.

On these allegations, he claimed compensation to the tune of Rs. 1,00,000 under section 110-A of the Motor Vehicles Act from both the respondents.

(4) Respondent no. 2 contested the claim application. Respondent no. 1 was proceeded *ex-parte*.

(5) On the pleadings of the parties, following issues were framed:—

- “1. Whether Nagesh Mathur died due to rash and negligent driving of tractor No. HRC-107—by respondent no. 1, the employee of respondent no. 2?
2. Whether the petitioner is entitled to any compensation as the legal representatives of the deceased, If so to what amount?
3. Relief.”

(6) *Vide* order dated 9th September, 1985, Motor Accidents Claims Tribunal (in short ‘MACT’), Faridabad awarded Rs. 14,300 to Shri Sunder Mohan Mathur on account of the untimely demise of his son Nagesh Mathur in this motor vehicle accident attributable to the rash and negligent driving of the said tractor by Ajit Singh, driver during the course of his employment with respondent no. 2.

(7) Not satisfied with the amount of compensation awarded to him, Sunder Mohan Mathur came up in appeal to this court namely FAO No. 1175 of 1985.

(8) Learned Single Judge of this Court awarded Rs. 50,000. He ordered that out of this amount of Rs. 50,000, Rs. 10,000 was liable to be deducted, which had been paid to him by the employer as *ex-gratia* payment.

(9) Still not satisfied with the amount awarded to Sunder Mohan Mathur as compensation, he has come up in this Letters Patent Appeal namely LPA No. 1729 of 1989 to this court.

(10) During the course of this appeal, Sunder Mohan Mathur died on 17th August, 1993. He was survived by his son Rakesh Mathur and daughter Dheera Mathur. Rakesh Mathur and Dheera Mathur were brought on record as the legal representatives heirs/dependents of Nagesh Mathur.

(11) In our opinion, learned Single Judge has gone completely off the track market by the principles which govern the award of compensation in a motor vehicle case.

(12) Rs. 10,000 was given by the employer to Shri Sunder Mohan Mathur by way of *ex-gratia* payment which was admissible to him on account of the loss of his son in motor vehicle accident in view of the provisions of Workmen Compensation Act. Nagesh Mathur was earning Rs. 750 per month. He was 26 years old. He was maintaining his unmarried sister Kumari Dheera Mathur and his father aged 55 years. Nagesh Mathur was not addicted to smoking, liquor, etc. Sunder Mohan Mathur’s mother aged 80 years was alive. His father died at the age of 75 years. In this family, thus, longevity was quite high. Sunder Mohan Mathur could be presumed to have remained alive for another 15 years. In Indian setting sons do contribute towards the marriages

of their sisters. If not more, he must have been contributing towards his father's and sister's maintenance and marriage to the tune of Rs. 400-500 per mensem. Going by this estimate, he would have contributed Rs. 75,000 towards his father's and sister's maintenance and sister's marriage over the years. We are quite alive to this reality of life that Nagesh Mathur was 26 years old and in course of 2-4 years, he would have married and raised his own family. After marriage and raising his own family, his capacity to contribute towards his father would have declined. At the same time, his capacity to earn would also have registered an increase due to gain in experience. Off setting this increase and corresponding distribution of responsibility towards his father and his own family, the net result would have been his contribution towards his father to the tune of 400-450 per mensem. In our social setup even if a sister is married, a brother has to contribute towards her on occasion of birth of some child to her or the marriage of her child or the christening ceremony of her child or the like. In our opinion, Sunder Mohan Mathur should have been awarded, if not more, at least Rs. 75,000 as compensation for the untimely demise of his son Nagesh Mathur at a young age of 26 years. On this amount of compensation, we award 12 per cent per annum as interest payable with effect from the date of claim application till realisation. Amount of compensation shall be payable by both the respondents, whose liability shall be joint and several. Out of this amount of compensation, we do not order deduction of Rs. 10,000 which had been unjustly ordered by the learned Single Judge. We award Rs. 1,000 as costs to the appellant. Amount of compensation shall be shared equally by Rakesh and Dheera.

(13) So, this appeal is allowed and the amount of compensation is enhanced from Rs. 40,000 to Rs. 75,000 with interest as directed above.

J.S.T.

Before R.S. Mongia, V.K. Bali and S.S. Sudhalkar, JJ

RANBIR SINGH, – *Petitioners*

versus

THE STATE OF HARYANA AND OTHERS, – *Respondents*

CWP No. 10658 of 1994

3rd February, 1998

Constitution of India, 1950-Art.226 – Ticket Verifiers working on daily wages with Haryana Roadways are not entitled to salary in the pay scale admissible to Ticket Verifiers working on regular basis – Claim for regularisation of services not gone into and petitioners relegated to remedy for making representation to the appropriate authority for its decision by reasoned order.

(State of Haryana and others *versus* Jasmer Singh and others, JT 1996(1))