
(2009) 04 DEL CK 0295
In the Delhi High Court
Case No : FAO No. 123 of 1997

Amrit Sharma and Others

APPELLANT

Vs

DTC and Others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 140, 166, 171

Citation : (2009) 04 DEL CK 0295

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; J.N. Aggarwal, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 31.1.1997 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,29,000/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 3.11.88 at about 8.30/8.32 AM Shri Ram Sarup Sharma was driving motorcycle bearing registration No: DHY 7805 from his residence towards Tilak Nagar on left side of the road at a slow pace when DTC bus bearing registration No: DEP 9778 being driven rashly, recklessly and negligently came from behind and hit the motorcycle with the front of the bus. Due to the impact, the deceased fell down on the road and thereafter the wheel of the bus passed over him causing his death at the place of accident itself.

4. A claim petition was filed on 16.3.1989 and an award was passed on 31.1.97. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal, counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 2535/- per month whereas after looking at the facts and circumstances of the case the tribunal should have

assessed the income at a higher rate. The counsel submitted that the tribunal has erroneously applied the multiplier of 5 while computing compensation when according to the facts and circumstances of the case multiplier of 13 should have been applied. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 49 yrs of age only and would have lived for another 20-30 yrs had he not met with the accident. It was also alleged by the counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in an year and hence, the deceased would have earned much more in his life span. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 12% per annum in place of only 15% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants. The counsel has relied on following judgments in support of his contentions:

6. Shri J.N. Aggarwal, Advocate has appeared on behalf respondents. He submitted that the award passed by the Id. Tribunal is just and fair and requires no interference by this Court. He also urged that the appellants are not dependents on the deceased thus no compensation should be awarded.

7. I have heard the learned Counsel for the parties and perused the record.

8. As regards the contention that the appellants are not dependants on the deceased and thus cannot claim compensation, in this regard in a decision of the Apex Court in Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, the Court explained the difference between "dependants" and "legal representatives and held that LR of deceased can claim compensation under Motor Vehicles Act. The relevant para of the said judgment is as under:

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability u/s 140 of the

Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent.

9. Therefore, the appellants can claim compensation.

10. PW 3 M.C. Pundir proved the salary of the deceased at Rs. 2535/-. After considering this, I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs.2500/- duly proved on record.

11. Therefore, no interference is made in relation to income of the deceased by this Court.

12. As regards the future prospects, I am of the view that there was sufficient material on record to award future prospects. Therefore, the tribunal committed no error in granting future prospects in the facts and circumstances of the case.

13. As regards the contention of the counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased is survived by widow and aged mother. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

14. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 5 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1988 and at that time II schedule to the Motor Vehicles Act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in 1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. At the time of the accident deceased was of 49 years of age and is survived by his widow and aged mother. In the facts of the present case, I am of the view that after looking at the age of the claimants and the deceased the

multiplier of 12 should have been applied. Therefore, the award is modified in this regard.

15. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon"ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 12% pa by the tribunal and the same is not interfered with.

16. On the contention regarding that the tribunal has erred in not granting compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium and the loss of services, which were being rendered by the deceased to the appellants. In this regard compensation towards loss of love and affection is awarded at Rs. 10,000/- compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

17. As far as the contention pertaining to the awarding of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of the deceased and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

18. Therefore, the total loss of dependency comes to Rs. 3,12,000/- ($3250 \times \frac{2}{3} \times 12 \times 12$).

19. After considering Rs. 80,000/- which is granted towards non- pecuniary damages, the total compensation comes out as Rs. 3,92,000/-.

20. In view of the above discussion, the total compensation is enhanced to Rs. 3,92,000/- from Rs. 1,29,000/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellant by the respondent insurance company with 80% to be awarded to the widow of the deceased and 20% to the mother of the deceased within 30 days of this order.

21. With the above directions, the present appeal is disposed of.