(2008) 09 SHI CK 0009

In the High Court Of Himachal Pradesh

Anita Mahendru and Others — APPELLANT

Vs

Kailash Verma and Others — RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 1338

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—The present appeal arises out of the impugned award dated 1.4.2003 passed by the Motor Accidents Claims Tribunal-I, Solan, H.P. in M.A.C. Petition No. 1-S/2 of 2002 titled as Anita Mahendru v. Kailash Verma, whereby a sum of Rs. 2,96,000 plus interest at the rate of 9 per cent has been directed to be paid as compensation to the appellants-claimants.

2. Brij Mohan, respondent No. 2 was driving vehicle No. HP 07-3725 owned by Kailash Verma, respondent No. 1 which met with accident on 4.11.2001 in which Kailash Chand Mahendru died. F.I.R. No. 258/2001 was registered against the driver.

3. The claimants being the legal heirs of the deceased Kailash Chand Mahendru filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as ''the Act'') for the grant of compensation. Claimant No. 1 is the wife, claimant Nos. 2 and 3 are minor daughters and claimant No. 4 is the mother of the deceased.

4. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether deceased Kailash Chand had died on account of rash and negligent driving by the respondent No. 2 as alleged?

OPP

(2) If issue No. 1 is decided in favour of the petitioners whether the petitioners are entitled for compensation, if so, how much and from whom?

OPP

(3) Whether the respondent No. 2 was not having valid and effective driving licence at the time of accident, if so, its effect?

OPR3

(4) Whether the vehicle in question was being driven in contravention of the insurance policy, if so, its effect?

OPR3

(5) Relief.

5. Issue No. 1 was decided in the affirmative and it was held that Kailash Chand Mahendru had died on account of rash and negligent driving of the respondent No. 2. With regard to issue Nos. 3 and 4, it was held that it could not be proved that respondent No. 2 was not having a valid and effective driving licence at the time of accident and that the vehicle in question was being driven in contravention of the insurance policy. Since the vehicle was insured, therefore, the respondent No. 3, National Insurance Co. Ltd. was held liable to pay compensation.

6. On issue No. 2, as against the claimants'' case that the deceased having retired as Naik from the Indian Army and drawing a pension of Rs. 2,000 per month was also having an additional income of Rs. 12,000 per month, the Tribunal determined the income of the deceased to be Rs. 3,000 and dependency at Rs. 2,000 per month. Applying multiplier of 12, a total sum of Rs. 2,88,000 was awarded on this account in addition to Rs. 5,000 as loss of consortium and Rs. 3,000 as conventional amount.

7. The claimants alone have filed the present appeal assailing the award limited to issue No. 2. The owner and the driver of the insurance company have not filed any appeal or cross-objections.

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

9. The age of the deceased was 41 years is not in dispute. Anita Devi, PW 1, widow of the deceased has deposed that her husband was interior decorator. He had taken training from Faridkot, Punjab when he was in the Army in 1989. She is getting family pension of approximately Rs. 2,600 per month. Though she has not placed on record any account of income but has deposed that she visited the place of business of her husband and the entire machinery required for the work of interior decoration was there and the bills for the same stand proved on record. She has deposed that her husband had hired accommodation from Rajinder Kumar at Manimajra, Chandigarh at a rental of Rs. 1,500 per month for the business. Her husband had purchased the machinery from Shimla Machinery

Store on 7.10.2000 amounting to Rs. 54,432 vide Bill, Exh. PW1/B. Her husband had undertaken work as an interior decorator at Pankaj Hotel, Chandigarh for a total sum of Rs. 80,000 and he contributed a sum of Rs. 10,000 per month towards the maintenance of the petitioners-claimants. She incurred an expenditure of Rs. 20,000 on the funeral and other expenses at the time of the death of her husband.

10. Chander Mohan, PW 3 had deposed that the deceased had purchased machinery from him and quotation thereof is Exh. PW1/B. The machinery was purchased by taking loan from Bhagat Bank, Solan.

11. Ashok Kumar, PW 4 has deposed that the deceased, engaged by him, was assisted by two carpenters and they completed the work within 22 days for which Rs. 48,000 was paid.

12. Rajinder Kumar, PW 5 has proved that Rs. 3,000 was received by him as rent for two months from the deceased for the rented premises at Manimajra, Chandigarh.

13. From the record, it is evident that the deceased had set up his independent business at Manimajra, Chandigarh and had invested a sum of Rs. 54,432 in the same for purchase of machinery and also Rs. 3,000 towards rent. Within a short span he had satisfactorily executed the work at Subathu, H.P. and received Rs. 48,000 for the same. He also carried out the work at Chandigarh and received Rs. 80,000 for the same. Though there is no proof with regard to the said amount but however it is evident that the deceased, a young man of 41 years had shown enough enterprise by setting up his shop at a busy commercial centre of North India, Chandigarh. He had a long and promising career and would have earned a substantial sum.

14. The Apex Court in Oriental Insurance Company Ltd. Vs. Jashuben and Others, , approved the ratio of law in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , as under:

(8) ...the assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

(9) The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self maintenance and pleasure and to ascertain

what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years'' purchase.

(10) Much of the calculation necessarily remains in the realm of hypothesis ''and in that region arithmetic is a good servant but a bad master'' since there are so often many imponderables. In every case ''it is the overall picture that matters'' and the court must try to assess as best as it can the loss suffered.

15. For the purpose of determination of compensation, Hon''ble Supreme Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , has determined the income of a housewife to be Rs. 3,000. The Tribunal in the instant case also arrived at the said figure but, however, without any basis. The death took place in the year 2001. The deceased was an interior decorator. If in the case of a housewife the income can be Rs. 3,000 then definitely in the instant case, the income of the deceased is bound to be more than that.

16. The Tribunal has assessed the income purely on the basis of guesswork. In my view, the dependency determined at Rs. 2,000 is on the lesser side and keeping in view the material on record, it would be just and proper that the income is enhanced to Rs. 5,100 and after deducting 1/3rd dependency is determined at Rs. 3,400 and as such enhanced from Rs. 2,000 to Rs. 3,400. This is being done considering that the deceased had set up his business away from home, in a fast growing urban estate of Chandigarh where the potential of higher earnings is always there for a young, hardworking and enterprising person. It has come on record that the deceased had executed two works within the short span of having set up his establishment.

17. Therefore, for the purpose of dependency, the income of the deceased is assessed at Rs. 3,400. Considering the age of the applicants and the deceased, the multiplier of 10 would be just and reasonable. The claimants, therefore, would be entitled to a sum of Rs. 3,400 x 12 x 10 = Rs. 4,08,000.

18. I also find that there is no cross-examination to the statement of PW 1 that she had incurred an expenditure of Rs. 20,000 for the funeral of the deceased. The court below has awarded Rs. 5,000 and Rs. 3,000 as loss of consortium and conventional amount. The sum is enhanced to Rs. 20,000 towards funeral expenses and Rs. 50,000 as loss of consortium. The deceased left behind his wife, mother and two minor daughters as legal heirs. He was the only bread-earner of the family. The deceased was a young and healthy man and would have lived and earned for a long time. Thus, the claimants are entitled to a total sum of Rs. 4,78,000. The enhanced compensation shall be apportioned in the same ratio determined by the Tribunal. The claimants shall be entitled to interest as awarded by the Tribunal.

19. The appeal is accordingly allowed in the aforesaid terms. The award of the Tribunal is modified to the aforesaid extent. No costs.

