
(2012) 02 DEL CK 0545
In the Delhi High Court
Case No : MAC App. 729 of 2011

Balkishan Sharma and Others

APPELLANT

Vs

Puran Singh and Others

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0545

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant; J.P.N. Shahi, Advocate for the Respondent No. 3 Oriental Insurance Company Ltd., for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The Appellants impugn a judgment dated 13.05.2011 passed by the Motor Accident Claims Tribunal whereby a compensation of Rs. 6,05,800/- was awarded for the death of Lalit Sharma who was aged 23 years at the time of the accident.

2. The contentions raised on behalf of the Appellants are:

i) That the deceased's mother was aged about 45 years but her age was taken 54 years by the Claims Tribunal without any material and a multiplier of 11 was applied instead of 13.

ii) The deceased was a Graduate from Delhi University. He had good future prospects. The Tribunal erred in not granting any future prospects.

iii) The Tribunal erred in fastening the liability of 30% of the compensation on the driver and owner of the Esteem Car bearing No.DL-6CE-3505. As per the evidence produced on record, there was no negligence on the part of the driver of Esteem Car in which the deceased Lalit Sharma was travelling. It is submitted that, in any case, it was a case of composite negligence.

3. On the other hand, it is submitted on behalf of the Respondent No.3 Oriental

Insurance Company Ltd. that the future prospects were rightly declined as there was no evidence with regard to the future prospects or that the deceased had a long duration of employment or that the employment was of permanent nature.

MULTIPLIER:

4. There is no documentary evidence on record to show the age of Smt. Savita Sharma except that in the Petition her age has been mentioned as 39 years. The Voter Identity Card of the deceased's father is available on record which shows that Balkishan Sharma was aged 36 years in the year 1994 when the Voter Identity Card was issued to him. Thus, it is established that he was aged 48 years at the time of the accident. In the circumstances, it can be presumed that the deceased's mother was also aged between 45 years to 50 years. The Claims Tribunal erred in selecting the multiplier of 11, whereas it should have been 13.

FUTURE PROSPECTS:

5. As far as non-grant of future prospects is concerned, apart from proving the salary certificate Ex.PW4/C, no evidence was produced by the Respondents No.1 & 2 that the deceased had any future prospects. Even the duration of the deceased's employment with M/s. CL Batra and Sons was not established. In this view of the matter, the Appellants were not entitled to any addition in the deceased's salary on account of future prospects.

NEGLIGENCE:

6. The Claims Tribunal found contributory negligence on the part of the driver of Maruti Esteem Car bearing No.DL-6CE-3505. The reasoning given by the Claims Tribunal is extracted hereunder:

8. The testimony of PW-3, Sh. Arvind Kumar is relevant on this issue. He deposed that on 27.10.2006, the PW-3, Sh. Arvind Kumar along with his friend Jai Chand and Sanjay Sharma was going to Mathura by a Maruti Van bearing No. DL-3cl-3754 AND AT A SOME DISTANCE Maruti Esteem Car DL-6CE-3505 was going ahead of their Maruti Van. At about 1:00 am, when they reached at Village Vanchari, GT road, they found that vehicle no. DL-6CE-3505 rammed against the UP roadways bus No.UP-80AC-9858, which was parked dangerously on the road without any parking signal or without putting any parking light or indicator on. It is stated that accident took place because of parking of offending bus in negligent manner. During cross-examination, PW-3 stated that police recorded his statement on 28.10.06 at 2:30 a.m. It is also stated that there were no lights on the road.

9. I have gone through the material on record. The FIR, site-plan, postmortem report, and testimony of PW-3 taken together fully establish the death of the deceased, Sh. Rajender and Sh. Lalit Sharma caused by the injuries sustained by them in the road accident involving vehicle bearing no. UP-80AC-9858. There is nothing on record to dispel the inference that deceased Sh. Rajender and Sh. Lalit Sharma died on account of injuries sustained by him in a road accident

which occurred on 27.10.2006 because of negligence of driver of vehicle bearing registration No.UP-80AC-9858. The bus no. UP-80AC-9858 was parked on the road without putting on the indicator or the back light in itself shows the negligence on the part of driver of said bus. However, it cannot be lost sight that the Maruti Esteem car hit the stationary bus. It can be easily inferred from the material on record that Maruti Esteem car must have been at the high speed, otherwise the driver of the Maruti Esteem could have applied the brakes in time and could have avoided the said accident. Under these facts and circumstances, in my opinion the driver of the Maruti Esteem car was also negligent. I apportion the negligence on the part of driver of bus no.UP-80AC-9858 and driver of Maruti Esteem Car bearing no. DL-6CE-3505 to be 70% and 30% respectively. The issue no.1 and 2 are decided accordingly.

7. Arvind Kumar appeared for cross-examination as PW3. In cross-examination on behalf of the driver of the U.P. Roadways Bus No.UP-80AC-9858, no suggestion was given as to the manner in which accident took place or that the accident took place due to rashness or negligence of the driver of the Esteem Car. In cross-examination on behalf of the Respondent Insurance Company, the witness deposed that the speed of the Esteem Car was 50-60 km per hour.

8. It is important to note that the accident took place at 1:00 am. PW3's testimony that there was no light on the highway was not discredited. His testimony that UP Roadways bus was parked dangerously on the road without giving any parking signals or without putting on any parking light/indicator was also not challenged in the cross-examination conducted by the First Respondent i.e. the driver of U.P. Roadways bus. In the circumstances, there was no material on record to reach the conclusion that there was any negligence on the part of the driver of the Esteem Car. Any person driving a motor car in the dead of the night would collide with a vehicle parked in the middle of the road without any parking light/Reflectors. In the circumstances, the finding of any negligence on the part of the Esteem Car driver is set aside.

9. The compensation is recomputed as under:

Loss of Dependency

$(8800 \times 12 \times \frac{2}{3} \times 13)$

Rs. 9,15,200/-

Loss of Love and Affection

Rs. 25,000/-

Loss to Estate

Rs. 10,000/-

Funeral Expenses

Rs. 5,000/-

Total

Rs. 9,55,200/-

10. The overall compensation is enhanced from Rs. 6,05,800/- to Rs. 9,55,200/-.

11. The enhanced amount of compensation shall also carry interest @ 7.5% per annum as granted by the Claims Tribunal from the date of filing of the Petition till the date of deposit. The Respondent No.3 Oriental Insurance Company Ltd. is directed to deposit the enhanced amount along with interest within 30 days with the Registrar General of this Court.

12. 20% of the enhanced amount shall be payable to the First Appellant. Rest shall go to the Second Appellant. 50% of the enhanced amount awarded to the Second Appellant shall be held in a Fixed Deposit for a period of one year. Rest of the amount shall be released to the Appellants forthwith on its deposit by the Insurance Company.

13. The Appeal is allowed in above terms.