(2011) 09 DEL CK 0566

In the Delhi High Court

Case No : FAO 235 of 1991

Bhagwati Devi and Others — APPELLANT

Vs

D.T.C. and Another — RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:
Motor Vehicles Act, 1939 — Section 92

Citation : (2012) 1 ILR Delhi 103

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Navneet Goyal, for the Appellant; Sushma Sachdeva, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—The Appellants in this appeal are the legal representatives of the deceased Ramesh Kumar, who seek to assail the judgment and award dated 23.08.1991 passed by the learned Motor Accident Claims Tribunal, Delhi, whereby a sum of Rs. 1,44,000/- with interest at the rate of 12% per annum from the date of the filing of the petition till the date of the realisation, was awarded to the Appellants on account of the unfortunate death of the said Ramesh Kumar in a road accident.

2. The concise facts are that on 02.09.1984, the deceased was going on a three-wheeler scooter bearing No. DER-1887 from Vishwas Nagar via Wazirabad bridge, and after coming on Alipur Road had taken a turn for reaching Rajpur Road, when he was hit by a Delhi Transport Corporation bus bearing No. DEP-8356, driven recklessly and negligently by the Respondent No. 2. A claim Petition u/s 92-A and Section 110-A of the Motor Vehicles Act, 1939 was filed by his legal representatives claiming a sum of Rs. 10,00,000/- by way of compensation, which culminated in the passing of the aforesaid award. The main ground of challenge to the award is that the award has not been passed in accordance with the well-settled principles of law and resultantly the Appellants

have been awarded a very meager amount as compensation for the death of the deceased, who was a young man of 26 years and the sole bread-earner of the Appellants being his widow, his four minor children and his parents.

3. Mr. Navneet Goyal, the learned Counsel for the Appellants, has assailed the award principally on four grounds:

(i) The learned Tribunal erred in taking the income of the deceased on the date of his demise to be in the sum of Rs. 750/- per month whereas, in fact, it stands established on record that the deceased was earning a sum of Rs. 2,000/- per month on the said date. The assessment of the average annual income of the deceased is also not in accordance with law as the future prospects of increase in the income of the deceased have not been taken into consideration.

(ii) The learned Tribunal though has made No. deduction towards the personal expenses of the deceased, a deduction of one-fifth of the income of the deceased towards his personal expenses and maintenance would be justified.

(iii) The learned Tribunal erred in applying the multiplier of 16 instead of the multiplier of 17, which is the appropriate multiplier keeping in view the fact that the deceased was in the age group of victims between 26 to 30 years of age.

(iv) No. non-pecuniary damages whatsoever and No. funeral expenses have been awarded to the Appellants by the learned Tribunal.

4. In order to substantiate his aforesaid contentions, Mr. Goyal, the learned Counsel for the Appellants, has taken me through the testimonies of the PW8 - Smt. Bhagwati Devi, the widow of the deceased; PW1 - Pramod Kumar, an independent witness and a cloth vendor; PW2 -Nand Kishore, a three-wheeler scooter driver; PW3 - Anil Kumar, who was also engaged in the same business as the deceased of selling clothes in weekly bazaars and PW5 - Gokul Parsad, an official from R.T.O Office Rajpur Raod, Delhi, who proved on record the licence issued in favour of the deceased for driving a three-wheeler scooter and motorcycle valid for the period from 24.10.1983 to 23.10.1986; and PW11 - Udai Raj Giri, the father of the deceased. He argued that the cumulative effect of the testimonies of these witnesses is that it stands established beyond any doubt that the deceased was engaged in the business of selling clothes in weekly bazaars in the evenings, thereby earning a sum of Rs. 50/- to 60/- per day. He had also purchased a three-wheeler scooter which he used to drive in the mornings in order to supplement his earnings. PW8 - the widow of the deceased and PW11 - the father of the deceased, categorically stated on oath that the deceased was contributing a sum of Rs. 2,000/- per month towards the household expenses. PW11 clarified that the deceased used to earn Rs. 50/- to Rs. 60/- per day by driving three-wheeler scooter and Rs. 50/- to Rs. 60/- per day by sale of clothes in the ''patri'' bazaars. The testimony of this witness is borne out by the tehbazari receipts (Exhibit PW11/2 to Exhibit PW11/52) and receipts of purchase of clothes (Exhibit Pw11/53 to Exhibit PW11/69) and the driving licence (Exhibit PW5/1) of the deceased authorizing him to drive a three-

wheeler scooter.

5. PW11 also proved on record the fact that the three-wheeler scooter bearing No. DER-1887 had been purchased by the deceased from one Shri Jai Kishan for a sum of Rs. 17,900/-, out of which Rs. 4,900/- was paid as advance vide receipt dated 28.08.1984 Exhibit PW11/1. He also proved on record the ''tehbazari'' receipts issued by Municipal Corporation of Delhi as Exhibit PW11/2 to Exhibit PW11/52 for the ''patri'' sales carried out by the deceased at the various weekly bazaars and the receipts of purchase of clothes including petticoats, blouse pieces and saree falls from ''Shiv Rubia House'' as Exhibit PW11/53 to Exhibit PW11/69. He stated that after the demise of the deceased, the three-wheeler scooter purchased by him was returned to the vendor, Shri Jai Kishan as the Appellants were not able to pay the balance amount of Rs. 13,000/- owed to the said Shri Jai Kishan while the sum of Rs. 4,900/- paid as advance along with Rs. 100/- paid towards insurance policy and other expenses were retained by the said Jai Kishan for meeting repair expenses of the three-wheeler scooter.

6. The aforesaid testimonies of PW8 and PW11 are corroborated by the testimonies of PW1 - Pramod Kumar, PW2-Nand Kishroe, PW3 - Anil Kumar and PW5-Gokul Parsad. PW1 and PW3 have both stated that the deceased was selling clothes in weekly bazaars held at Shastri Nagar, Jahangirpuri, Rani Bagh, Malka Ganj, Ashok Vihar, Kishan Ganj, Railway Colony etc., at a profit margin of around 25%, earning thereby Rs. 50/- to 60/- per day. PW2 deposed that the deceased used to ply his three-wheeler in the mornings and in the evenings he used to sit in the weekly ''patri'' bazaars for selling clothes. PW5, an official from the office of R.T.O., Rajpur Road, Delhi proved on record the driving licence bearing No. 83/R-6606 (Exhibit PW5/1) issued in the name of the deceased for driving a three-wheeler scooter and motorcycle.

7. The testimonies of the aforesaid witnesses could not be shaken in cross-examination and I am, therefore, inclined to agree with the submission of Mr. Goyal that the assessment of the income of the deceased by the learned Tribunal is not correct. I see No. reason to disbelieve the testimonies of PW8 and PW11, the wife and the father of the deceased respectively, that the deceased was contributing a sum of Rs. 2,000/- per month towards household expenses. However, even assuming there is a slight exaggeration on the part of the aforesaid witnesses, in my view, the deceased could not have been earning less than Rs. 1,500/- per month. He was a young man of 26 years, and had he not met with the unfortunate accident undoubtedly he would have earned more as a scooter driver (who falls in the category of a skilled worker) and also by selling garments in the various weekly bazaars. Thus, I am inclined to assess the average annual income of the deceased to be in the sum of Rs. 2,250/- per month [that is Rs. 1,500/- (current income) plus Rs. 750/- (anticipated increase in income) = Rs. 2,250/- per month]. Deducting one-fifth therefrom towards the personal expenses of the deceased (though No. deduction had been made by the learned Tribunal), the average monthly loss of dependency of the legal

representatives of the deceased works out to Rs. 1,800/- per month, that is, Rs. 21,600/- per annum.

8. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Supreme Court has tabulated the appropriate multipliers to be applied for augmenting the multiplicand constituting the loss of dependency of the Appellants, keeping in view the age of the deceased. In the present case, as noticed above, the deceased fell in the age group of victims between 26 to 30 years of age and thus the appropriate multiplier to be adopted would be the multiplier of 17, which is the multiplier approved of in the case of Sarla Verma (supra). Thus calculated, the total loss of dependency of the Appellants works out to Rs. 21,600/- x 17 = Rs. 3,67,200/-, which may be rounded off to Rs. 3,67,500/- (Rupees three lakh sixty seven thousand and five hundred only).

9. Apart from the aforesaid amount of pecuniary damages, I am inclined to hold that the Appellants are entitled to a sum of Rs. 2,500/- towards the funeral expenses and last rites of the deceased. The Appellants are also held entitled to receive a sum of Rs. 5,000/- each towards the loss of consortium, towards the loss of love and affection of the deceased and towards the loss of the estate of the deceased, that is, in all a sum of Rs. 3,85,000/- (Rupees three lacs and eighty five thousand only) is awarded to the Appellants.

10. The award amount is accordingly enhanced by a sum of Rs. 2,41,000/-. The enhanced amount shall enure solely to the benefit of the Appellant No. 1, the widow of the deceased, the parents of the deceased having died during the pendency of the appeal. The Appellants are also held entitled to receive interest at the rate of 7.5% per annum on the enhanced amount from the date of the filing of the petition till the date of the realisation. The Respondent No. 1 is directed to deposit the entire award amount as enhanced by this Court along with the interest thereon, after adjusting the amount already paid, if any, with the Registrar General of this Court within 30 days from the date of the passing of this order.

11. The appeal is allowed in the aforesaid terMs.

12. There shall be No. order as to costs.

