(2013) 02 DEL CK 0046

In the Delhi High Court

Case No : Mac. App. 629/2011

Const. Hanmant Dahiphale and Another — APPELLANT

Vs

Smt. Alka Jain and Others — RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) 2 ACC 478

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

Bench : Single Bench

Judgement

G.P. Mittal, J.—The Appellants who are the driver and owner of the truck No. AS-01-V-3707 impugn a judgment dated 26.03.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 46,44,484/- was awarded in favour of the Respondents on the ground that there was no negligence on the part of Appellant No. 1 in causing the accident and that the compensation awarded is exorbitant and excessive.

NEGLIGENCE

It is urged by learned counsel for the Appellants that there was no negligence on the part of Appellant No. 1 in driving the earlier said truck. In fact, the rickshaw puller (Chhotey Lal) was pulling the cycle rickshaw on a slope. He lost control and dashed against the truck resulting in the unfortunate accident.

2. I have before me the Trial Court record. The Respondents (the Claimants) in order to prove the negligence examined Narayan Kumar Aggarwal (PW-2). He deposed that on 10.08.2009 at about 4:40 P.M. they boarded the cycle rickshaw at Old Delhi Railway Station for going to Kanti Nagar, Shahdara. When they reached near red light, the truck in question being driven in a rash and negligent manner came from the Hanuman Mandir Angoori Bagh side. It came on the wrong side and dashed against the riskshaw. As a result of the forceful impact, the rickshaw turned turtle and was dragged for about 20 ft. In cross-examination a suggestion was put to the witness that the cycle rickshaw was hit by the BSF

vehicle on the backside, which of course was denied by PW-2. Even if it is assumed that the rickshaw was hit by the truck in question on the back side, the driver of the truck was all the more negligent and responsible for causing the accident.

3. The Appellant No. 1 filed his own Affidavit Ex.RW-1/A and entered the witness box as RW-1. He himself did not give the manner of the accident. He simply testified that as per information of the Court of Inquiry conducted by BSF Authorities, Chhotey Lal, (rickshaw puller) was responsible for causing the accident. Thus, PW-2?s testimony was not challenged by evidence which was in possession of the Appellants. A suggestion was also given to PW-2 that the accident occurred at 6:45 P.M. which is completely belied from the record as deceased Rajesh Jain was admitted in JPN hospital at 5:05 P.M.

4. In view of the above discussion, on the touchstone of preponderance of probabilities, the version of PW-2 is to be accepted. Furthermore, the testimony of PW-2 further stands corroborated by registration of a criminal case u/s 279/ 304-A IPC against the First Appellant. Thus, the finding on negligence reached by the Claims Tribunal cannot be faulted.

QUANTUM OF COMPENSATION

5. The Claimants proved on record the Income Tax Return (ITR) for the year 2008-2009 (for the period ending 31.03.2007) as Ex.PW-1/8 whereby the deceased had returned an income of Rs. 1,61,857/-. The Claimants further proved the ITR Ex.PW-1/9 for the Assessment Year 2009-10 (for the period ending 31.03.2009) whereby the deceased had returned the income of Rs. 4,09,442/-. It is urged by the learned counsel for the Appellants that this ITR was a suspicious document. It was filed only on 31.12.2009 much after the accident. The same, therefore, should have been excluded for consideration by the Claims Tribunal.

6. The Claims Tribunal simply believed the ITR Ex.PW-1/9 for the AY 2009-2010, deducted Rs. 24,485/- towards income tax to compute the loss of dependency.

7. Apart from the fact that there is quantum jump in the income for the AY 2009-10 from the previous year of 2008-2009 and the fact that the ITR was filed on 31.12.2009 much after the last date of filing ITR, there are other grounds to disbelieve the ITR Ex.PW-1/9. As per the ITR for the previous year the deceased received a salary of Rs. 68,000/- from M/s. Suresh Cloth Store and Rs. 64,563/- from M/s. Innova Marketing apart from brokerage and commission of Rs. 29,028/-. In the next year the income from M/s. Suresh Cloth Store increased from Rs. 68,000/- to Rs. 1,57,680/- and from M/s. Innova Marketing from Rs. 64,563/- to Rs. 2,04,878/-. Admittedly, the income of Rs. 4,09,442/- was taxable even if full deduction of Rs. 1 lac was made under Chapter VIA of the Income Tax Act. Apart from the quantum jump by more than 150% the deceased was liable to pay advance tax on this income in September, 2008, December, 2008 and March, 2009. No evidence was produced by the Claimants as to

whether any advance tax was paid. Admittedly, no tax was deducted at source even on an income of Rs. 2,04,878/- received from Innova Marketing by the deceased.

8. In V. Subbulakshmi and Others Vs. S. Lakshmi and Another, , the Supreme Court declined to believe the ITR filed after the death of the deceased.

9. In the instant case also the ITR filed after four months and 20 days of the death of the deceased, particularly in view of the circumstances narrated above, should not have been taken into consideration by the Claims Tribunal. Thus, the Claimants are entitled to compensation only on the basis of ITR for the previous year, which showed the income of Rs. 1,61,857/-.

10. There was no evidence with regard to the deceased?s future prospects. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, and held that Santosh Devi provided for an increase of 30% towards inflation in the victim?s income in case of self employed persons and persons having fixed income.

11. At the time of the accidental death the deceased was aged 33 years. The appropriate multiplier therefore is 16 only, which has been rightly applied by the Claims Tribunal. Since the numbers of dependents were four, there has to be deduction of one-fourth towards personal and living expenses.

12. The loss of dependency thus comes to Rs. 25,09,370/- (Rs. 1,61,857/- - Rs. 1,000/- (income tax) + 30% x 3/4 x 16).

13. The Claimants are further entitled to a sum of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses. The overall compensation comes to Rs. 25,64,370/-.

14. The compensation stands reduced from Rs. 46,44,484/- to Rs. 25,64,370/-.

15. In pursuance of the order dated 14.07.2011 the compensation awarded by the Claims Tribunal was deposited in this Court. The excess compensation of Rs. 20,80,114/- along with interest @ 7.5% per annum as deposited in this Court along with interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant No. 2. Rest of the compensation of Rs. 25,64,370/- along with proportionate interest and the interest accrued during pendency of the Appeal shall be payable to the Claimants in the proportion and the manner as directed by the Claims Tribunal.

16. The Appeal is allowed in above terms.

17. The statutory deposit of Rs. 25,000/- shall be refunded to the Second

Appellant. Pending Applications stands disposed of.

