
(2007) 05 DEL CK 0245

In the Delhi High Court

Case No : FAO No's. 30 of 1990 and 16 of 1992 and CM No. 2116 of 1990

Delhi Development Authority

APPELLANT

Vs

Smt. Rukmani Bansal and Others

RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Companies Act, 1956 — Section 303(2)
Motor Vehicles Act, 1939 — Section 110A, 92A

Citation : (2008) ACJ 2770

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; B.S. Mann, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 20.11.1984, deceased, Krishan Kumar Bansal, aged 45 years received fatal injuries in a road accident involving jeep bearing No. DED-7749. He died. He was survived by his wife, 2 sons and father.

2. Dependents filed a claim petition u/s 110-A read with Section 92-A of the M.V. Act 1939 claiming a compensation of Rs. 15,50,000/- on account of death of the deceased in the said road accident.

3. After holding driver of the offending vehicle guilty of rash and negligent driving, vide award dated 23.8.1989, the Tribunal has awarded a compensation of Rs. 3 lacs to the dependents.

4. Aggrieved and dissatisfied with the said award, DDA/appellant preferred an appeal registered as FAO No. 30/1990.

5. Respondents in the said appeal (dependents before the Tribunal) filed cross objections i.e. CM No. 2116/1990.

6. While the said appeal and cross objections were pending decision, dependents moved a review petition before the learned Tribunal.

7. Vide order dated 9.4.1991, the review petition was allowed and award dated 23.8.89 was modified by enhancing the compensation amount from Rs. 3,00,000/- to Rs. 5,84,000/-.

8. DDA preferred another appeal challenging order dated 9.4.1991. The appeal was registered as FAO No. 16/1992.

9. The issue involved in both the appeals as also cross objections relates to quantum of compensation, therefore, I shall only be noting only such facts and evidence as are relevant for adjudication of said issue.

10. In the claim petition, earnings of the deceased was stated as Rs. 6,000/- per month. It was stated that the deceased was partner in 2 firms, viz., M/s. Gopi Nath & Sons and M/s. Shibban Lal Gopi Nath and was having 30% share in each firm. It was further stated that deceased was also a director in M/s. C.K. Exporters Pvt. Ltd. and was getting Rs. 3,500/- per month as remuneration out of which a sum of Rs. 550/- was deducted as tax at source.

11. In support of the averments made in the claim petition pertaining to the earnings of the deceased, dependents examined 4 witnesses, viz., A.K.Gupta (PW-1), Dinesh Chand (PW-5), Gopi Nath (PW-6) and Rukmani Bansal (PW-8).

12. Gopi Nath, the father and Rukmani Bansal the wife of the deceased in their testimony as PW-6 and PW-8 respectively reiterated the averments made in the claim petition.

13. Shri A.K.Gupta, director in M/s. C.K. Exporters Pvt. Ltd. stepped into the witness box as PW-1 and deposed that there were 4 directors in M/s. C.K. Exporters Pvt.Ltd. and deceased, K.K.Bansal was one of them. He further deposed that all 4 directors including deceased were getting fixed remuneration of Rs. 3500/- per month. He proved the salary certificate of the deceased as PW-1/1.

14. Diwan Chand, accountant in M/s. Shibban Lal Gopi Nath stepped into witness box as PW-5 and supported the averments made in the claim petition as also testimonies of other witnesses.

15. In order to prove the earnings of the deceased, 3 assessment orders, viz., Ex.PW-5/1, PW-5/2 and PW-5/3 and an income tax return, Ex.PW-5/4, was placed on record.

16. Further, in order to establish that deceased was a partner in afore-noted 2 firms and was having 30% share in each of the firm, partnership deeds (Ex.PW-6/1 and Ex.PW-6/2) were placed on record. (Partnership deeds so filed are photocopied documents.).

17. After appreciating afore-noted documents, learned Tribunal has taken income of Rs. 29,404/- shown in the income tax return, Ex.PW-5/4 as the annual income of the deceased. (I note that no deduction towards income tax has been made by the Tribunal) Deducting Rs. 9,404/- for personal spending of the deceased

(nearly 30% of the income), annual loss of dependence has been calculated at Rs. 20,000/-. Applying multiplier of 15, total loss of dependence has been determined at Rs. 3,00,000/-.

18. In the review petition, it was contended that learned Tribunal erred in taking income shown in the income tax return, Ex.PW-5/4 as annual income of the deceased for the reason said income tax return related to a period of 2 months and 20 days only.

19. Tribunal concurred with the said contention advanced by the appellant. Taking Rs. 31,540/- as the annual income of the deceased from the 2 firms on the basis of income tax return, Ex.PW-5/1 and Ex.PW-5/2 and Rs. 42,000/- as the salary of the deceased from M/s. C.K. Exporters Pvt. Ltd., the Tribunal has determined the total income of the deceased as Rs. 73,540/-. Deducting Rs. 17,000/- towards income tax, net annual income of the deceased is determined as Rs. 56,540/-. Deducting Rs. 20,000/- towards personal expenses of the deceased, Tribunal has determined loss of dependence at Rs. 36,540/-. Applying multiplier of 15, total loss of dependence has been determined at Rs. 5,48,000/-. Thus, award dated 23.8.89 has been modified by enhancing the compensation by a sum of Rs. 2,48,000/-.

20. The controversy in the instant case centers around appreciation of afore-noted assessment orders, Ex.PW-5/1, Ex.PW-5/2 & Ex.PW-5/3 and income tax return, Ex.PW-5/4.

21. Before proceeding with the compensation assessed, I note following observations made by the learned Tribunal:

From the perusal of the income tax returns Ex.PW-5/4, it can be seen that prior to 1.9.1984, deceased was not having taxable income. Had there been any taxable income of the deceased prior to 1.9.1984, then he would have filed income tax returns of the Firm even for that period. Similarly, Income Tax returns of the firm of K.K.Bansal and M/s. Gopi Nath, the tax returns filed by the income tax authority is for Rs. 29,400/- for the year 1986-87 and returns for the year, 1984-85 shows the income of the deceased as Rs. 92,320/-.

22. Notwithstanding above observations, learned Tribunal has determined annual income of the deceased on the basis of income tax return, Ex.PW-5/4.

23. The first question that arises is whether the Tribunal was right in determining annual income of the deceased on the basis of income tax return Ex.PW-5/4.

24. Income tax return, Ex.PW-5/4 shows the income of the deceased for a period from 01.09.1984 to 20.11.1984 i.e. 2 months 20 days.

25. It is an admitted fact that income tax return, Ex.PW-5/4 was filed on 27.1.1987 i.e. nearly 2 years after the death of the deceased in the said road accident.

26. During his life time, the deceased did not file any income tax return. The fact

that said return was filed after 2 years of the death of the deceased leads to a strong inference that said income tax return was filed to show an exaggerated income of the deceased in order to get more compensation.

27. According to income tax returns PW-5/4, earnings of the deceased consisted of following 4 components:

- (i) Remuneration of Rs. 3500/- from M/s. C.K. Exporters Pvt. Ltd.
- (ii) 30% share of profits from M/s. Gopi Nath & Sons.
- (iii) 30% share of profits from M/s. Shibban Lal Gopi Nath.
- (iv) Income from house property.

28. According to the dependents, earnings of the deceased consisted of first 3 components. No witness has stated a word about the income of the deceased from any property. Assuming there was some income from house property, since the asset remained, so did the income there from.

29. Income tax return Ex.PW-5/4 shows the earnings of the deceased for a period of 2 months 20 days as Rs. 29,404/-. Meaning thereby, the deceased was earning approximately Rs. 10,000/- per month. In the claim petition, it was stated that deceased was earning Rs. 6,000/- per month. There is a clear contradiction between the averments made in the claim petition and income tax return, Ex.PW-5/4. Further the period of the return i.e. 1.9.1984 to 20.11.1984 makes it a highly suspicious document. It means that for the period prior to 31.8.1984, during his life time, the deceased had no taxable income. The deceased died on 20.11.1984. It was thus profitable to create evidence of income for a period of about 3 months prior thereto.

30. These surrounding circumstances renders income tax return, Ex.PW-5/4, an inherently suspicious document.

31. Learned Counsel for the respondents contended that witnesses of the respondents were not subjected to any cross examination on the issue. Counsel urged that no suggestion was given to them that income tax return, Ex. PW-5/4, was a created document and filed with a view to claim more compensation. He thus contended that as statements of the witnesses remained unrebutted, and thus the Tribunal has correctly placed reliance on income tax return, Ex.PW-5/4.

32. I do not concur with the learned Counsel for the respondents for the reason, lack of cross examination does not cure the inherent suspicious nature of the income tax return, Ex.PW-5/4.

33. Thus, I hold that income of the deceased cannot be determined on the basis of the income tax return Ex.PW-5/4.

34. Likewise, assessment order Ex.PW-5/3 where under income tax payable by the deceased was assessed on the basis of the income tax return Ex.PW-5/4 cannot be relied upon.

35. The next question is, whether it is proved that the deceased was a director in M/s. C.K. Exporters Pvt. Ltd. and was paid a monthly remuneration of Rs. 3500/-.

36. It is an admitted fact that the claim made was that the deceased was appointed as a director in the said company in August 1984, i.e., 3 months prior to his death.

37. Another admitted fact is that the company in question is a private limited company.

38. Next admitted fact is that though stated to be a director in the company, the deceased was not holding any share in the company.

39. No reasons have been given as to why the deceased was made a director in the company even though he had no pecuniary investment or stake in the company. It is not shown nor proved that the company is a family owned company.

40. A perusal of Ex.PW-1/1 stated to be the salary certificate of the deceased shows that alleged salary for the month of October and November 1984 was credited to the alleged loan account of the deceased.

41. Section 303(2), Companies Act, 1956 makes it mandatory for a company to file Form No. 32 when a director is appointed. Form No. 32 evidencing the appointment of the deceased as a director in the said company has not been placed on record.

42. Witnesses of the respondents had deposed that a sum of Rs. 550/- was deducted as tax at source from the alleged remuneration of Rs. 3500/-. But, no TDS certificate showing the said deduction has been placed on record.

43. Above facts show that the respondents have tried to create evidence of some payment made in the past to the deceased by the company being utilized to show that the deceased was a director in the company.

44. Thus, I hold that it is not proved that the deceased was a director in the said company and was being paid a monthly remuneration of Rs. 3500/-.

45. The next question to be determined is whether the deceased was a partner in M/s. Gopi Nath & Sons and M/s. Shibban Lal Gopi Nath having 30% share in each firm. If so, what were his earnings from said firms?

46. Copies of partnership deeds (Ex.PW-6/2 and Ex.PW-6/3) placed on record establish that the deceased was a partner in said firms and was having 30% share in each firm.

47. In relation to earnings of deceased from firm M/s. Gopi Nath & Sons, the assessment order, Ex.PW-5/2 is relevant. The same shows annual income/profit of said firm as Rs. 27,170/- for the assessment year 1984 -85. The share of the deceased is shown as Rs. 6,832/-. As the said assessment order was on the basis of a return which was filed prior to the death of the deceased, the same can be

accepted.

48. In the said assessment order, annual income of the firm is shown as Rs. 27,170/- and share of deceased is shown as Rs. 6,832/-.

49. Thus, I hold that annual income of the deceased from the firm M/s. Gopi Nath & Sons was Rs. 6,832/-.

50. To show the earnings of the deceased from the firm M/s. Shibban Lal Gopi Nath, assessment order Ex.PW-5/1 has been placed on record. The same shows annual income/profit of said firm in the assessment year 1984-85 as Rs. 92,320/-. Share of the deceased is shown as Rs. 24,708/-.

51. It is relevant to note that afore noted assessment order was issued on basis of an income tax return which was filed subsequent to the death of the deceased.

52. Partnership deed, Ex.PW-6/2 shows that partnership firm M/s. Shibban Lal Gopi Nath commenced in the year 1963.

53. A perusal of the record of the Tribunal shows that no income tax return filed prior to the death of the deceased has been placed on record.

54. At this juncture, I note testimony of Diwan Chand (PW-5) who was an accountant in M/s. Shibban Lal Gopi Nath. He had deposed that said firm was assessed to income tax.

55. If the firm was assessed to income tax as deposed to by the afore noted witness, then the question arises why no income tax return which was allegedly filed prior to the death of the deceased has been placed on record.

56. The fact that no income tax return which was filed prior to the death of the deceased has been placed on record leads to an inference that earnings/profits of the said firm were such on which no income tax was payable.

57. In absence of any income tax return which was filed prior to the death of the deceased, not much reliance can be placed on assessment order, Ex.PW-5/1, which is based on an income tax return which was filed subsequent to the death of the deceased.

58. For the assessment year 1984-85, income up to Rs. 15,000/- per annum was non-taxable income. Therefore, I hold that annual income/profits of the firm M/s. Shibban Lal Gopi Nath was Rs. 15,000/-. Since the share of the deceased was 30%, annual earnings of the deceased comes to Rs. 4500/-.

59. In view of my above discussion and particularly paras 48 and 57, I hold that total annual income of the deceased comes to Rs. 11,382/-. (Rs.6,832/- + Rs. 4,500/- = Rs. 11,332/-)

60. As noted herein above, in the assessment year 1984-85, income up to Rs. 15,000/- per annum was non-taxable income. Therefore, no deduction is made towards income tax.

61. Taking into consideration the fact that minimum wages as notified under Minimum Wages Act increase by nearly 250% to 300% every 10 years to neutralize rise in inflation and cost of living, it could reasonably be expected that the earnings of the deceased would have doubled by the time he would have stopped earning. Thus, mean average annual income of the deceased comes to Rs. 16,998/-.

62. Deducting 1/3rd for the personal spending of the deceased, annual loss of dependence comes to Rs. 11,332/-.

63. Tribunal has applied multiplier of 15. Considering that deceased was aged 45 years at the time of the accident, multiplier of 15 as applied by the Tribunal is on the higher side. I consider multiplier of 11 as appropriate.

64. Thus, total loss of dependence comes to Rs. 1,24,652/-.

65. Tribunal has awarded Rs. 3,00,000/- for loss of dependence. Thus, compensation is reduced by a sum of Rs. 1,75,348/-.

66. Award dated 23.8.1989 is modified by reducing the compensation under the head "loss of dependence" by a sum of Rs. 1,75,348/-.

67. FAO No. 30/1990 accordingly stands disposed of by reducing the compensation by a sum of Rs. 1,75,348/-.

68. As already noted, cross objections bearing No. 2116/1990 were filed praying for enhancement of compensation.

69. It is settled law that normal rule of determination of loss of dependence is not strictly applicable to cases where capital asset is the income of the deceased. See decision of the Supreme Court reported as New India Assurance Co. Ltd. Vs. Charlie and Another,

70. In view of my above discussion, I hold that no ground of enhancement is made out.

71. CM No. 2116/1990 is accordingly dismissed.

72. As already noted, FAO No. 16/1992 challenges the order dated 9.4.1991 by which review sought by dependents was allowed and award dated 23.8.1989 was modified.

73. It is settled law that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. (See Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji,

74. Motor Vehicles Act 1988 does not confer power to review on Motor Accident Claims Tribunals. Thus, Tribunal was not justified in allowing review filed by the dependents and passing award dated 9.4.1991.

75. Even otherwise, as the original award dated 23.8.1989 is legally not

sustainable as discussed and held above, the necessary corollary that emerges is that award dated 9.4.1991 which had modified award dated 23.8.1989 becomes null and void.

76. FAO No. 16/1992 is accordingly allowed and order/award dated 9.4.1991 is set aside.

77. FAO No. 30/1990 is allowed in terms of para 65 above.

78. CM No. 2116/1990 in FAO No. 30/1990 is dismissed.

79. No costs.