

(2008) 06 DEL CK 0007
In the Delhi High Court
Case No : FAO No. 394 of 1998

Delhi Transport Corporation	Vs	APPELLANT
Smt. Jagpati Devi and Others		RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 06 DEL CK 0007

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : H.S. Dhir and Ataul Haque, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—This is an Appeal u/s 173 of the Motor Vehicle Act, 1988 (hereinafter referred to in short as the "Act") against the judgment dated 29.6.1998 passed by the Motor Accident Claims Tribunal (hereinafter referred to in short as the "Tribunal"). By the impugned judgment the Tribunal has awarded a compensation of Rs. 4,83,000/- to the Respondents herein.

2. The Appellants i.e. Delhi Transport Corporation being aggrieved by the same alongwith the driver of the vehicle Shri Vijay Pal Singh Appellant No. 2 has preferred the present Appeal. The Appellants are aggrieved; on two grounds one; that the Tribunal has wrongly found that the Appellant No. 2 was responsible for causing the death of the husband of Respondent No. 1 due to rash and negligent driving of the bus bearing registration No. DBP 6030 (hereinafter referred to in short as the "offending vehicle"); and the second ground of grievance is, with respect to, the compensation awarded to the Respondents herein.

3. In so far as the first ground is concerned, the grievance of the Appellants is that the Tribunal has relied upon the testimony of PW2 one Shri Tirath Pal Singh, as against that of, Appellant No. 2 (RW1) i.e. the driver who was examined as a

witness on behalf of Appellants.

4. As regards the other ground on which the Tribunal's judgment is impugned, the Learned Counsel for the Appellants has submitted that the Tribunal has wrongly calculated the loss of dependency by taking into account the "gross salary" of the husband of Respondent No. 1 which was Rs. 3939.79 rounded off to Rs. 3940/- whereas, the Tribunal was required to take into account the take home salary of the deceased. According to the Appellants, the take home salary of the deceased was Rs. 3774.79 and hence, the award for compensation could not have exceeded to Rs. 3,80,000/-. This is the only ground on which the award for compensation has been impugned.

5. Before I deal with the submissions made by the Learned Counsel for the Appellants, as none appeared for the Respondent despite service, the following brief facts are noted hereinbelow:

6. On 17.3.1994 the husband of the first Respondent Shri Surya Dev was proceeding on his cycle from Madhuban Chowk to Mangolpuri. In point of time when Surya Dev had crossed the Police Line he met with an accident with the offending vehicle driven by Respondent No. 1; killing Shri Surya Dev on the spot.

7. Aggrieved by the same, the first Respondent alongwith other LRs of the deceased Surya Dev, that is, their four sons and a daughter instituted a suit in the Tribunal. The said suit was filed in the Tribunal on 28.3.1994.

8. On 7.9.1995 the Tribunal framed the following issues:

1. Whether the deceased suffered fatal injuries on accident on 17.3.1994 caused due to rash and negligent driving of the vehicle as alleged?

2. What amount of compensation, if any, are the petitioner entitled and from whom?

3. Whether the respondents No. 1 and 2 are liable to payment of compensation for reason stated in W.S.

9. The Respondents herein examined three witnesses in support of their claim before the Tribunal. The Tribunal after considering the evidence on record and the submissions of both sides decided all the issues against the Appellants.

10. Having heard the Counsel for the Appellants and perused the record, my opinion is as follows:

11. In so far as Issue No. 1 is concerned, the Tribunal accepted the testimony of one Tirath Pal Singh (PW2) who was the eye witness to the accident as against that of Appellant No. 2 (RW1) i.e. the driver of the offending vehicle. In the testimony of Tirath Pal Singh it has come out that he was moving on his own cycle behind the deceased Surya Dev. He has stated in his deposition that they were moving from Madhuban Chowk in the direction of Mangolpuri when the offending vehicle came from behind and hit the cycle which Surya Dev was

riding, resultantly they were trapped between the pavement on the left hand side of the road and the left wheel causing the death of Surya Dev on the spot. As against this, the testimony of Appellant No. 2(RW2) i.e. the driver that the accident took place in the middle of the junction when Surya Dev, the husband of Respondent No. 1 collided against the left side of the bus was not believed by the Tribunal. In accepting the testimony of Tirath Pal Singh (PW2) the Tribunal also relied upon the observation of the Police Officer contained in the FIR Ex P/2. The relevant observations on this aspect of the matter are extracted hereinbelow:

Issue No. 1

The involvement of the bus in the accident resulting in the cyclist Surya Dev suffering injuries which proved fatal is admitted on both ends. Even otherwise, this fact is duly brought out by documents of the nature of FIR exhibit P-2 and post mortem report exhibit P-3. The only question on which controversy revolves is about fault. Both sides blamed each other for the occurrence. PW.2 Tirath Pal was the neighbour of the deceased. He affirmed on oath that he was also moving on his own cycle just behind Surya Dev, both of whom were going to Mangolpuri from Madhuban Chowk. He denied that they had come from the side of Madhuban Chowk and hit against the cyclist Surya Dev from behind causing his death on the spot. He states he had gone to the house of Surya Dev to inform his family. During his cross examination he clarified that the accident had occurred ahead of the junction. As per him both cyclists were moved close to the left side of the pavement. He admitted that he had not seen the bus prior to the occurrence. According to him, Surya Dev had been trapped within the wheel of the bus, which had hit against him with its left portion. Cross-examination directed against him could not bring out any circumstance which could show that this witness was not present at the scene, as was the suggestion given to him. Respondent, on the other hand, appearing as R.W.1 stated that accident occurred somewhere in the middle of the junction. According to him, the cyclist had come from out of Police Line gate and had collided against the left portion of the bus. I am not inclined to believe him and in this respect in light of unassailed testimony of PW2 to the opposite effect at the cost of repetition it may be mentioned that PW2 had stated that the cyclist was also moving in the same direction as the bus which had hit the former from behind. In these circumstances, it is not plausible that the cyclist could have come from left side Police Line gate so as to himself strike against the bus moving on a road crossing the alleged direction of the cyclist at right angle. The contents of FIR exhibit P/2 based on observation of local police officer fully corroborate the version given by PW2. I, therefore, have no hesitation in deciding the issue in affirmative.

12. Having perused the testimony of Tirath pal Singh PW2, as well as, Appellant No. 2 (RW1) and the evidence on record, I see no reason not to concur with the finding of the Tribunal. Tirath Pal Singh was an eye witness to the accident who has established by his testimony that he was ten paces behind the deceased Surya Dev at a point in time when the accident took place. The cross-

examination of Tirath Pal Singh PW2 also shows that he denied the suggestion that he was not present at the scene of the accident.

13. In these circumstances, the version of the accident given by Tirath Pal Singh (PW2) is both believable and stands unshaken in cross-examination.

14. As regards Issues No. 2 and 3, the Tribunal followed the ratio of the judgment of the Supreme Court in the case of Sarla Dixit v. Balwant Yadav and Anr. reported in 1996 (3) SCC 1274. Thus applying the ratio of the aforesaid judgment of the Supreme Court the loss of dependency was calculated by taking the gross salary of the deceased as Rs. 3940/- per month which, after it was doubled in order to account for future increase in salary was added with initial figure of Rs. 3940/- and then divided by two (2) to obtain an average monthly salary of the deceased. The Tribunal thereafter deducted one-third (1/3rd) from the average monthly salary to obtain monthly loss of dependency. The resultant figure was annualized. To the product a multiplier of 10 was applied based on the age of the deceased indicated in the post-mortem report, which was, given as 45 years. In other words, the formula applied was as follows:

i) $\text{Rs. } 3940 \text{ (gross salary)} + \text{Rs. } 3940 \times 2 = 7880 = 11820 \text{ divided by } 2 = \text{Rs. } 5910$; $(5910 - 5910 \times 1/3\text{rd}) = \text{Rs. } 3940 \text{ pm loss of dependency.}$

ii) $\text{Rs. } 3940(\text{pm}) \times 12 \text{ (month)} \times 10 \text{ (multiplier)} = \text{Rs. } 4,72,800.$

15. Besides loss of dependency, the Tribunal has also granted Rs. 2000 towards funeral expenses, Rs. 2500 towards loss of estate and Rs. 5000 towards loss of consortium/filial love & affection. The total compensation of Rs. 4,82,300 rounded off to Rs. 4,80,00 was awarded under the following heads:

- Loss of dependency	Rs. 4,72,800.00/-	- Funeral expenses	Rs. 2,000.00/-	- Loss of estate	Rs. 2,500.00/-	- Loss of consortium/ filial love & affection	Rs. 5,000.00/-	-----	Total	Rs. 4,82,300.00/-	Rounded Off	Rs. 4,83,000.00/=	-----
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16. The only issue that the Learned Counsel for the Appellant has raised in respect of compensation is that in calculating the loss of dependency the Tribunal has taken into account the gross salary of Rs. 3940/- as against net salary amounting to Rs. 3,774.79/-. There is no issue raised with respect to any other aspect either in the Appeal or while making oral submissions. The aforesaid objection of the Learned Counsel for the Appellant has to be rejected in view of the clear observations of the Supreme Court in the case of Sarla Dixit v. Balwant Yadav and Anr. wherein in Paragraph 7 while enunciating the formula for calculating the loss of dependency "gross salary" of the deceased has been taken into account.

17. In view of the above, I do not find any error in calculation of the compensation awarded by the Tribunal with respect to loss of dependency. Since no other objection has been raised, I find no difficulty in concurring with the findings of the Tribunal on the issue of award of compensation.

18. The Appeal is dismissed.