

(2008) 02 DEL CK 0318
In the Delhi High Court
Case No : MAC App No. 229 of 2007

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

Date of Decision : 18-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168

Citation : AIR 2008 Delhi 157

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sumeet Pushkarna, for the Appellant; L.C. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this appeal, the appellant seeks to challenge the impugned award dated 10.10.2006 whereby an award of Rs. 4,80,000/- was passed by the tribunal in favor of claimant/respondent. Brief summary of the facts to deal with the contentions raised by the parties are as under:

On 11.12.1992 Shri Ram Mehar Singh, driver was performing his duty on DTC Bus No. DBP-6233 from Punjabi Bagh to Lajpat Nagar at Ring Road. He was driving the bus very carefully and cautiously on the correct side of the road. At about 5:40pm when the bus reached Palika Bhavan, R.K. Puram, one pedestrian came running from the central verge/divider without taking care of the flow of the traffic on the road and allegedly fell against the right rear side of the bus and received injuries. The injured was admitted by the driver in the Safdarjung Hospital on the same day i.e. 11.12.1992. thereafter, the injured was discharged from hospital and was readmitted in the same hospital on 04.01.1993. He ultimately expired on 10.01.1993 at 8:45am.

2. Mr. Sumeet Pushkarna, counsel for the appellant assailed the findings of the tribunal primarily on two grounds. The first contention of the counsel for the appellant is that no negligence on the part of the driver of the offending vehicle

was established on record. In support of his arguments, counsel for the appellant placed reliance on the site plan, which was filed along with the FIR to contend that from the site plan, it would be evident that the deceased was a pedestrian and hit himself with the rear side of the bus after jumping from the central verge of the road. Counsel for the appellant further contends that except the driver of the offending vehicle, there is no other eye witness to the said incident and Therefore, the tribunal committed a grave error by not attaching any importance to the testimony of the driver who was the sole eye witness to the incident. Even the criminal court had acquitted the driver of the offending vehicle after the failure of the prosecution to prove the negligence on the part of the driver. Assailing the impugned award, counsel for the appellant submits that at best the driver of the bus could have been held liable for contributory negligence in causing the accident not solely responsible for the negligent act. The contention of the counsel for the appellant is that the deceased pedestrian had not taken care of the surroundings on the main ring road and had jumped from the central verge and hit his head to the rear side of the bus in question. In support of his proposition, counsel for the appellant placed reliance on the following judgments:

1) Mohd. Hanif and Anr. v. H.P. Road Transport Corporation and Ors. (2006) 2 SCC 293.

2) The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, .

3) Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors. 2 (2006) ACC 36 (SC)

3. The counsel for the appellant also found fault with the multiplier of 15 as applied by the tribunal and also for granting benefit of future prospects to the deceased without their being any evidence on record to this effect.

4. Mr. L.C. Goyal, counsel for the respondent on the other hand vehemently refutes the submissions of the counsel for the appellant. Counsel for the respondent submits that claim petition in the instant case was filed u/s 166 of the Motor Vehicles Act but the same was converted into one u/s 163-A of the Motor Vehicles Act and Therefore, the negligence as envisaged u/s 166 of the Motor Vehicles Act was not required to be proved by the respondents. The requirement of law as contemplated u/s 163-A of Motor Vehicles Act was to establish use of the vehicle in causing the said accident and not the negligence as argued by the counsel for the appellant. Counsel for the respondent contends that the judgments of the Supreme Court cited by the learned Counsel for the appellant are not applicable to the facts of the present case. Multiplier as laid down under the Second Schedule of the Motor Vehicles Act was applied and as per counsel for the respondent no fault can be found with the multiplier of 15 as applied by the tribunal keeping in view the age of the deceased and that of the claimants/respondents.

5. I have heard learned Counsel for the parties and have also perused the record.

6. Perusal of the record shows that before allowing conversion of the petition u/s 166 to Section 163A of the Motor Vehicles Act, the tribunal had framed issues arising out of the pleading of the parties, wherein the first issue framed by the tribunal relates to the aspect of rash and negligent driving of the offending bus. The tribunal while taking into account the evidence adduced by the parties as well as FIR No. 642/1292 came to the conclusion that the accident had occurred due to the rash and negligent driving of the bus in question. At the time of passing the award, tribunal had perhaps lost sight of the fact that once the petition was converted from Section 166 to Section 163-A of the Motor Vehicles Act, there was no requirement to prove the rash and negligent act of the driver of the offending vehicle. In any event of the matter, the monthly earnings of the deceased as taken into consideration by the tribunal does not exceed the monetary requirement of upper limit of Rs. 40,000/- per annum as envisaged u/s 163-A of the Motor Vehicles Act, Therefore, no fault can be found with the ultimate result of the impugned award even if it is taken that rash and negligent act of the driver was not proved on record. As a result of above discussion, I do not find any infirmity in the impugned award although after the conversion of the petition from Section 166 to Section 163-A of the Motor Vehicles Act, the negligence on the part of the driver of the offending vehicle was not required to be proved yet, if any finding on the negligence has been given by the tribunal, the same can be treated as otiose and redundant in the facts and the circumstances of the present case.

7. On the second contention of counsel for the appellant that the tribunal has not applied the correct multiplier as laid down in the Second Schedule of the Motor Vehicles Act, I do not find any merit in the submission of the counsel for the appellant as no reasons have been given by the counsel for the appellant as to how multiplier of 15 was not applicable in the facts of the present case. It is no more rest integra that while computing compensation Second Schedule to the Motor Vehicles Act, 1988 should be normally applied and deviation there from can be allowed only in peculiar facts and circumstances. In this regard, in *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, the Hon'ble Apex Court observed as under:

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

In view of the above legal position, and after comparing the age of the respondents/claimants and the deceased, the multiplier of 15 as applied by the tribunal is just and proper and requires no interference.

8. There is no merit in the appeal.

Dismissed.