

(2011) 03 DEL CK 0213
In the Delhi High Court
Case No : FAO No. 151 of 1999

Delhi Transport Corporation

APPELLANT

Vs

Usha Rani and Others

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2011) 03 DEL CK 0213

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : J.N. Aggarwal, for the Appellant; V.P. Chaudhary Nitinjya Chaudhary and Sushma, for the Respondent

Judgement

Reva Khetrapal, J.—By way of this order, it is proposed to decide the appeal filed by the Delhi Transport Corporation against the judgment and award of the Motor Accident Claims Tribunal dated 18.12.98 and the cross-objections filed on behalf of the Respondents Nos. 1 to 5 under Order 41 Rule 22 of the Code of Civil Procedure, 1908.

2. Briefly delineated, the facts leading to the filing of the appeal are that on the fateful day, that is, on 05.03.1990 one Mr. Chandershekhar (hereinafter referred to as "the deceased") was sitting on his scooter bearing No. DNU 2530, which was stationary at the red light signal, when a DTC bus No. DLP 1255 came from behind and struck against the scooter. As a result of this, the deceased (scooterist) got sandwiched between DTC bus No. DLP 8762 standing in front of the scooter and the bus No. DLP 1255, which had hit his scooter from behind.

3. The aforesaid version of the accident recorded in FIR No. 108/90 at Police Station Connaught Place, Exhibit PW1/1 on the basis of DD No. 9A is, however, denied by the Appellant/DTC. According to the version of the DTC, which contested the Claim Petition filed by the widow and the children of the deceased (the Respondents No. 1 to 5 herein), bus No. DLP 1255 was proceeding from Shaheed Bhagat Singh Terminal towards Tilak Nagar on route No. 851. At about

10.05 hours, when the said bus reached the Outer Circle, Connaught Place, there was a heavy rush on the road on account of peak hours. The driver of the DTC bus was driving his bus very cautiously, following the traffic going ahead, when the deceased who was driving a two wheeler scooter, rashly and negligently, and at a very fast speed, came from behind and tried to enter in between the two buses. He could not control his scooter and hit against the stationary bus, which was standing at the red light signal. After hitting the stationary bus, he fell down while bus No. DLP 1255, which was coming from behind at a dead slow speed and was also going to stop, crushed the fallen scooter of the deceased. Thus, there was no negligence on the part of the bus driver and the accident was caused due to the sole negligence of the deceased himself.

4. The learned Claims Tribunal relying upon the testimony of PW-2, Sh.R.K. Bhatia, who witnessed the accident, and discarding the testimony of the DTC bus driver- RW-1 that the scooterist came from behind and tried to enter between the buses on the ground that his aforesaid testimony was at variance with his own statements made before the DTC authorities, held that the accident was caused due to the negligent driving of the driver of bus No. DLP 1255 and, therefore, DTC and its driver were liable to pay compensation to the family of the deceased.

5. The Tribunal then proceeded to assess the loss of dependency of the Respondents Nos. 1 to 5 and after considering the evidence of PW-3, Sh. T.R. Arora, the Bank Manager of the Oriental Bank of Commerce where the deceased was working and PW-4, Smt. Usha, the widow of the deceased arrived at the following conclusions:

4. The evidence of PW3 and PW4 wife of the deceased shows that deceased was only 32 years of age and was working in Oriental Bank of Commerce as a Typist and getting salary of Rs. 2499.52p, was a graduate and his salary would have gone up in future from time to time. As a grade I, he would have got salary of Rs. 4192/- as deposed by PW3. He left behind two children and both the parents. (sic.)

5. I have assessed the dependency of the family on the deceased. Keeping in view the principle laid down by SC, in the case of Sarla Dixit v. B.R. Yadav to determine the average future emoluments, his last drawn salary of Rs. 2499.92, can be taken as the dependency of the family, if we take the average of the salary and its double, and then deduct 1/3rd towards his own maintenance. The annual dependency of the family is thus assessed at Rs. $2500 \times 12 = 30,000/-$. The deceased being only 32 years of age and wife being younger, maximum multiplier of 16 yrs. is deserved in the case. The capitalised multiplicand thus comes to Rs. $30,000 \times 16 = 4,80,000/-$. In my view, this sum if invested by the family, would bring to the family a sum of Rs. 4800 p.m., which would equal his salary, if he had been provided as grade I, as deposed by PW3.

6. In the light of above discussion, I award a compensation of Rs. 4,80,000/-

(including Rs. 25,000/- already granted) with interest @ 12% p.a. from the date of petition till its realization.

6. Aggrieved by the aforesaid judgment and award, the Appellant - Delhi Transport Corporation has preferred the present appeal for setting aside the award, to which cross-objections have been preferred by the Respondents Nos. 1 to 5 for enhancement of the award amount from Rs. 4,80,000/- to at least Rs. 10,00,000/- with interest @ 15% per annum from the date of petition till realization.

7. Arguments were addressed by Mr. J.N. Aggarwal, Advocate on behalf of the Appellant and by Mr. V.P. Chaudhary, Senior Advocate on behalf of the Respondents Nos. 1 to 5. Mr. J.N. Aggarwal contended that the Tribunal had committed an error apparent on the face of the record by relying upon the deposition of PW-1, ASI Ram Niwas from Police Station Connaught Place, who was not even a direct witness to the occurrence of the accident and had wrongly accepted and relied upon the testimony of PW-2, Sh.R.K. Bhatia. He pointed out that PW-2, Sh. R.K. Bhatia, though he stated that he saw the accident and narrated the whole incident in his examination-in-chief, but in his cross-examination he admitted that he had neither taken leave from his office nor any written permission, but had simply gone to the accident site and then to the hospital, which showed that he had cooked up the story with the police. Further, this witness had contradicted his statement by stating that when he reached the hospital, he saw that the deceased was conscious but later on he said that he was not fully conscious. He also stated that he had a talk with the deceased whereas PW-1, ASI Ram Niwas, who was the author of the FIR, stated that the injured was unfit for making statement.

8. Mr. V.P. Chaudhary, the learned senior counsel for the Respondents on the other hand has taken me through the testimony of PW-2, Sh.R.K. Bhatia in support of his contention that a bare reading of the testimony of this witness would suffice to show that it was entirely creditworthy. I am inclined to agree for the reason that the witness clearly stated in his examination-in-chief that the accident took place while he was standing at the Regal Crossing near Khadi Gram Udyog, and that his office was situated in G-Block, Connaught Place and he was going to his office when the accident took place at around 10.00 A.M. In cross-examination he stated that he did not take any leave on that day from his Bank, nor had he taken written permission from the Bank but he had simply gone to the Bank and after informing them about the accident, he went back to the spot, and thereafter to the hospital. The testimony of this witness is corroborated by the testimony of PW1, ASI Ram Niwas of Police Station Connaught Place, who stated that the injured had already been removed to the hospital when he reached the spot. On reaching the spot, he recorded the statement of the Traffic Constable, Kiran Singh posted with Police Station Parliament Street, Traffic Line and thereafter of the eye-witness before going to the hospital. There is thus, in my view, ample evidence on the record to show that the accident occurred as a

result of the rash and negligent driving of bus No. DLP 1255 belonging to the Delhi Transport Corporation and no fault can be found with the findings of the learned Tribunal in this regard.

9. Adverting now to the cross-objections filed by the Respondents No. 1 to 5, who have sought enhancement of the award amount. Although a number of cross-objections were raised in CMP No. 12014/08, a two-fold submission is made by Mr. Chaudhary, the learned senior counsel for the Respondents Nos. 1 to 5 at the time of hearing. The first contention of the learned senior counsel is that keeping in view the fact that the deceased was survived by his widow, Smt. Usha Devi, his two minor children and his parents, the Tribunal erred in deducting 1/3rd of the income of the deceased towards his personal expenses and maintenance instead of 1/4th thereof. I find substance in this contention for the reason that it is not conceivable that with such a large family to support, the deceased could have spent 1/3rd of his earnings on his own maintenance and personal expenses.

10. The second contention of Mr. Chaudhary, the learned Counsel for the Respondents Nos. 1 to 5 is that admittedly the deceased was working in a Nationalized Bank on a salary of Rs. 2,499.52 per month and was a graduate, but the learned Tribunal failed to take notice of the fact that with the implementation of the recommendation of the Fifth Pay Commission, the income of the deceased, had he remained alive, would have more than doubled in the year 1998 itself, and the income of the deceased at the time of his retirement would not have been less than Rs. 15,000/- p.m. I find merit in this contention as well. Admittedly, the deceased was working in the Oriental Bank of Commerce as a typist and getting a salary of Rs. 2,499.5 rounded off to Rs. 2,500/- per month. In due course of time, he would have made advancement in his career, and his salary most certainly would have increased with the passage of time. The Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, has laid down certain guidelines to be followed by all Tribunals and Courts in the country for assessment of the future prospects of a victim in a fatal accident case. Since the assessment of the salary of the deceased is not based thereon by the learned Tribunal in the present case, I proceed to re-calculate the compensation to be awarded to his legal representatives for their loss of dependency in consonance with the said guidelines laid down in Sarla Verma's case (Supra). The deceased being 32 years of age on the date of accident, for the purpose of assessment of his average annual income, an addition of 50% towards future prospects must be made to the salary being drawn by him at the time of the accident. Thus computed, the average annual income of the deceased works out to Rs. 2,500/- + Rs. 1,250/- = Rs. 3,750/- per month. Deducting 1/4th therefrom towards the personal expenses of the deceased, the contribution of the deceased towards the family expenses comes to Rs. 2,812.50 per month i.e. Rs. 33,750/- per annum. By applying the multiplier of "16" to the aforesaid multiplicand, the total loss of dependency of the Respondents works out to Rs. 5,40,000/-. Adding non-

pecuniary damages of Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses, the total amount of compensation payable by the Appellant to the Respondents No. 1 to 5 comes out to Rs. 5,80,000/-. The Respondents are accordingly held entitled to the aforesaid amount with interest @ 12% per annum from the date of the filing of the petition till its realization as awarded by the Tribunal.

11. Seventy per cent of the award amount shall enure to the benefit of Respondent No. 1, Smt. Usha Devi, the widow of the deceased, and the balance 30% shall be equally apportioned between the Respondents Nos. 2, 3 and 5 being the children and the mother of the deceased. The Appellant is directed to make the payment of the aforesaid amount to the Respondents within a period of 30 days from the date of the receipt of the order.

12. The appeal is disposed of accordingly. A copy of this order be sent to the counsel for Appellant for compliance.