(2018) 01 DEL CK 0201

In the Delhi High Court

Case No : MAC.APP. No. 625, 629, 661, 662, 664 Of 2016, Civil Miscellaneous No. 44394 Of 2016

General Manager Uttarakhand Parivhan Nigam — APPELLANT

Vs

Tejpal & Anr — RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 337, 338, 427

Citation : (2018) 01 DEL CK 0201

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Daleep Dhayni, S.N. Parashar

Judgement

J.R. Midha, J

1. The appellant has challenged the common award dated 11th April, 2016 passed by the Claims Tribunal whereby compensation has been awarded in eight cases (five cases relating to the death and three cases relating to the injury). The appellant has filed five appeals relating to the five death cases only.

2. On 31st May, 2012 at about 05:00 A.M, Uttarakhand Roadways bus bearing No.UA-07M-6313 was going from Bulandshahr to Delhi. The aforesaid bus hit TATA 407 bearing No. UP-13C-2417 coming from the opposite direction near Shyana Main Road, Karimpur which resulted in death of 19 persons travelling in TATA 407. The police registered FIR No.151/2012 under Sections 279/337/338/304-A/427 IPC at P.S. Aurangabad against the driver of Uttarakhand Roadways bus. The legal representatives of the five persons who died in the accident and three injured persons filed separate claim petitions before the Claims Tribunal which resulted in the common award.

3. The Claims Tribunal awarded compensation of Rs.2,75,000/- in respect of death of Maya Devi, Rs.7,15,000/- in respect of death of Rameshwari Devi, Rs.10,05,000/- in respect of death of Monika, Rs.4,25,000/- in respect of death

of Yash and 4,25,000/- in respect of death of Dhruv.

4. The appellant has challenged the common award on the ground that there was no negligence on the part of the driver of the Roadways bus and, therefore, the appellant is not liable to pay the compensation.

5. According to the claimants, the Roadways bus came on the wrong side and hit TATA 407 which is clear from the site plan prepared by the police. It is submitted by the claimants that the police has registered the criminal case against the driver of the Roadways bus in which the charge sheet has been filed against driver of the Roadways bus. It is further submitted that the appellant has accepted the award in respect of the three injury cases and has paid compensation to the injured persons. As such, the finding of negligence has attained finality and appellant cannot challenge the same in these appeals.

6. With respect to the appellant's challenge to the finding of the negligence, the site plan prepared by the police is on the record of the Claims Tribunal which clearly shows that the Roadways bus came on the wrong side and hit TATA 407. The police registered the case against the driver of the Roadways bus. This Court agrees with the Claims Tribunal that the accident occurred due to the rash and negligent driving of the Roadways bus. That apart, the appellant has accepted the award in three injury cases and, therefore, the finding of negligence of the driver of the Roadways bus has attained finality.

7. The appellant seeks reduction of the amount awarded by the Claims Tribunal to the claimants. The claimants have filed cross-objections in three cases relating to the death of Monika, Yash and Dhruv to seek enhancement of the compensation amount.

8. Learned counsel for the claimants submits that the cross-objections bearing CM No.31583/2017 in MAC.APP.629/2016 relating to the death of Master Dhruv; cross-objections bearing CM No.39318/2017 in MAC.APP.625/2016 relating to the death of Monika have been placed in MAC.APP.662/2016 and the cross-objections bearing CM No.31578/2017 in MAC.APP.662/2016 relating to the death of Master Yash have been placed in MAC.APP.629/2016.

9. The Registry is directed to place CM No.31583/2017 in MAC.APP.629/2016; CM No.39318/2017 and CM No.39319/2017 in MAC.APP.625/2016; CM No.31578/2017 in MAC.APP.662/2016.

CM No.39319/2017

10. The delay in filing the cross-objections is condoned. The application is disposed of.

MAC.APP.661/2016 relating to the death of Rameshwari Devi

11. Rameshwari Devi, aged 45 years was working as vegetable seller. Rameshwari Devi was survived by four sons and one daughter. The Claims Tribunal took income of the deceased as Rs.7,020/- according to the minimum

wages, deducted 50% towards her personal expenses and applied multiplier of 14 to compute the loss of dependency at Rs.5,90,000/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. The total compensation awarded by Claims Tribunal is Rs.7,15,000/- along with interest @ 9% per annum. The appellant seeks reduction of the award amount on the ground that the claimants namely the four sons and one daughter were not dependent upon the deceased. The Claims Tribunal held that the daughter of the deceased was dependent upon the deceased and the Claims Tribunal awarded the compensation on that basis. There is no infirmity in the finding of the Claims Tribunal. The compensation awarded by the Claims Tribunal is just, fair and reasonable. MAC.APP.661/2016 is dismissed.

MAC.APP.664/2016 relating to the death of Maya Devi

12. Maya Devi, aged 53 years was a vegetable seller. She was survived by five sons who were not dependent on her. The Claims Tribunal awarded Rs.2,50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. This Court is of the view that the claimants were entitled to compensation towards loss of estate. The compensation of Rs.2,50,000/-under the head of loss of love and affection is treated as compensation for loss of estate as well as loss of love and affection. The compensation awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any interference. MAC.APP.664/2016 is dismissed.

MAC.APP.629/2016 and cross-objections relating to the death of Master Dhruv

13. Master Dhruv was aged four years at the time of accident and was survived by his father. The Claims Tribunal took the notional income of deceased as Rs.15,000/-, added Rs.1,00,000/- towards non-pecuniary compensation and Rs.1,00,000/- towards pecuniary losses. The total compensation awarded by Claims Tribunal is Rs.4,25,000/-. Learned counsel for the claimant submits that, in Chetan Malhotra v. Lala Ram, 2016 SCC OnLine Del 2981, this Court has laid down the principles for computation of compensation in respect of the minor children, according to which the claimants are entitled to compensation of Rs.5,20,000/-.

14. The death in this case occurred on 31st May, 2012. The cost inflation index (CII) for the financial year 2012-2013 was 852. The inflation-corrected notional income comes to Rs.38,610/-, rounded off to Rs.39,000/-(Rs.15,000/- × 852/331). 1/3rd is deducted towards personal and living expenses and the multiplier of 10 is applied according to the age of the deceased. The total pecuniary loss to estate is calculated as Rs.2,60,000/-(Rs.39,000/- × 2/3 × 10). Adding similar amount on account of composite non-pecuniary damages, the total compensation in this case works out as Rs.5,20,000/- (Rs.2,60,000/- × 2). Applying the principles laid down in Chetan Malhotra (supra), the appellant is entitled to compensation of Rs.5,20,000/-.

15. MAC.APP.629/2016 is dismissed whereas the cross-objections are allowed. The compensation awarded by the Claims Tribunal is enhanced to Rs.4,25,000/- to Rs.5,20,000/- @ 9% per annum from the date of filing of the claim petition till the realization.

MAC.APP.662/2016 and cross-objections relating to the death of Master Yash

16. Master Yash was aged ten years at the time of accident and was survived by his father. The Claims Tribunal took the notional income of deceased as Rs.15,000/-, added Rs.75,000/- towards non pecuniary compensation and Rs.1,00,000/- towards pecuniary losses. The total compensation awarded by Claims Tribunal was Rs.4,25,000/-. Learned counsel for the claimant submits that, in Chetan Malhotra (supra), this Court had laid down the principles for computation of compensation in respect of the minor children, according to which the claimants are entitled to compensation of Rs.5,20,000/-.

17. The death in this case occurred on 31st May, 2012. The cost inflation index (CII) for the financial year 2012-2013 was 852. The inflation-corrected notional income comes to Rs.38,610/-, rounded off to Rs.39,000/-(Rs.15,000/- × 852/331). 1/3rd is deducted towards personal and living expenses and the multiplier of 10 is applied according to the age of the deceased. The total pecuniary loss to estate is calculated as Rs.2,60,000/-(Rs.39,000/- × 2/3 × 10). Adding similar amount on account of composite non-pecuniary damages, the total compensation in this case works out as Rs.5,20,000/- (Rs.2,60,000/- × 2). Applying the principles laid down in Chetan Malhotra (supra), the appellant is entitled to compensation of Rs.5,20,000/-.

18. MAC.APP.662/2016 is dismissed whereas the cross-objections are allowed. The compensation awarded by the Claims Tribunal is enhanced to Rs.4,25,000/- to Rs.5,20,000/- @ 9% per annum from the date of filing of the claim petition till the realization.

MAC.APP.625/2016 and cross-objections relating to the death of Monika

19. Monika aged 30 years was holding a Diploma in Beauty Culture & Hair Dressing and it was claimed that she was earning Rs.25,000/- per month. However, in the absence of proof of income, the Claims Tribunal took the minimum wages of Rs.8,528/-, deducted 50% towards personal expenses and applied multiplier of 17 to compute the loss of dependency as Rs.8,70,000/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded by Claims Tribunal is Rs.10,05,000/-.

20. The claimants seek enhancement of the compensation on the ground that the personal expenses of deceased be reduced from 1/2 to 1/3 as the deceased was married and survived by her husband and future prospects of 40% be added according to the age of the deceased.

21. Taking the income of the deceased as Rs.8,528/-, adding 40% towards future

prospects, deducting 1/3rd towards personal expenses and applying the multiplier of 17, the loss of dependency is computed as Rs.16,23,731.2. Adding Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, total compensation computed as Rs.16,93,731/- (Rs.16,93,731.2 rounded off).

22. MAC.APP.625/2016 is dismissed whereas the cross-objections are allowed. The compensation awarded by the Claims Tribunal is enhanced to Rs.10,05,000/- to Rs.16,93,731/- @ 9% per annum from the date of filing of the claim petition till the realization.

23. Uttrakhand Parivhan Nigam is directed to deposit the enhanced award amount along with upto date interest with the Registrar General of this Court in MAC.APP.625/2016, MAC.APP.629/2016 and MAC.APP.662/2016 within 30 days.

24. The claimants shall remain present in Court on the next date of hearing along with the passbooks of their savings bank accounts near the place of their residence in a nationalised bank along with PAN card and Aadhaar card. The concerned bank is directed not to issue any cheque book and/or debit card to the claimants and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to the appellants without the permission of this Court. The claimants shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbooks. The claimants shall produce the original passbooks along with the necessary endorsement on the next date of hearing.

25. List on 15th February, 2018.

26. Copy of this judgment be given dasti to counsels for the parties under the signature of Court Master.