

(2011) 09 DEL CK 0559
In the Delhi High Court
Case No : FAO 616 of 2001

Harpreet Kaur and Others

APPELLANT

Vs

Dharam Pal Singh and Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Income Tax Act, 1961 — Section 143(3)
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2012) 1 AD 117 : (2011) 184 DLT 759

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : J.S. Garkal, for the Appellant; D.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—By way of this appeal, the Appellants, who are the legal representatives of the deceased Surender Pal Singh, who died in a road accident on 28.08.1992, seek enhancement of the amount of compensation awarded to them by the learned Motor Accident Claims Tribunal, Delhi by its judgment and award dated 25.07.2001.

2. The facts relevant for the disposal of the appeal are that a claim petition bearing Suit No. 899/1992 was filed by the Appellants under Sections 166 and 140 of the Motor Vehicles Act, 1988, claiming compensation in the sum of Rs. 80 lacs against the driver, the owner and the insurer of the offending tanker, which had crushed the TSR in which the deceased was travelling as a passenger. In the written statement filed by him, the Respondent No. 1 denied that he was driving the offending tanker at the time of the accident, but the insurance of the said vehicle in the name of the Respondent No. 2-owner was admitted by the Insurance Company, arrayed as the Respondent No. 3 in the claim petition. The learned Claims Tribunal having come to the conclusion that the deceased Surender Pal Singh as well as the driver of the TSR had suffered fatal injuries in the accident due to the rash and negligent driving of the Respondent No. 1,

proceeded to assess the monthly income of the deceased on the basis of the documentary evidence on record.

3. The Tribunal took into account the testimony of PW4 - Smt. Harpreet Kaur (the Appellant No. 1), who testified that her husband, whose date of birth was 25.11.1955, was an Engineer by profession earning a sum of Rs. 40,000/- per month and was an income tax payee. She also stated that he was the proprietor of M/s. Hydrolog Engineers which was dealing in water treatment plants and a Director in M/s. Moon Drop Chemineers Private Limited and M/s. I.E.I. Engineering Services Limited. He was also the proprietor of M/s. K.S.Chugh and Associates, Ludhiana dealing in the manufacture of auto parts and machine products and had taken over the factory just before his death. She proved on record the income tax Returns for the Assessment Years 1992-93 and 1993-94 as well as the Assessment Order u/s 143(3) of the Income Tax Act for the Assessment Year 1992-93 (Exhibit PW4/2 to Exhibit PW4/4). In the course of her examination, she stated that M/s. Hydrolog Engineers is now a partnership firm and she is one of the partners. She further stated that the present income from the said business was Rs. 2,00,000/-, which was her share and the firm was still paying income tax. In answer to a query put to her, she admitted that the income tax Returns were filed after the death of her husband, though she categorically denied the suggestion that her husband was not earning Rs. 40,000/- per month.

4. On the basis of aforesaid evidence on record, the learned Tribunal awarded a sum of Rs. 4,78,000/- to the Appellants with interest at the rate of 9% per annum from the date of the filing of the petition till the date of the realisation of the award amount, including the amount of the interim award dated 24.01.1995. Aggrieved therefrom, the present appeal has been preferred by the Appellants claiming that a niggardly amount of compensation has been award to them.

5. The contention of Mr. J.S.Garkal, the learned Counsel for the Appellants, is that the learned Tribunal grossly erred in the assessment of the income of the deceased for the following reasons:

(i) The deceased was holding a Permanent Income Tax Number as PAN/GIR No. 60-S, CIR No. 20 (1), New Delhi and was being assessed in his individual capacity. He had an income of Rs. 4,64,588/- which was taxable for the Assessment Year 1991-92.

(ii) The learned Tribunal failed to consider that the deceased during his lifetime, had paid advance tax to the tune of Rs. 1,70,000/- and TDS in the sum of ` 25,199/- for the Assessment Year 1992-93, that is, the financial year 1991-92.

(iii) The learned Tribunal failed to consider the fact that in the Assessment Order u/s 143(3) of the Income Tax Act for the Assessment Year 1992-93 (Exhibit PW4/3) it had been clearly mentioned that the total turnover from the business of M/s. Hydrolog Engineers was Rs. 1,10,95,856/- and a gross profit of Rs. 16,75,051/- had been declared, giving a Gross Profit Rate of 15.09% as against

the Gross Profit Rate of 15.08% as in the immediately preceding Assessment Year, on a total turnover of ` 93.09 lacs, leaving aside the other income of the deceased.

(iv) The learned Tribunal also failed to consider the fact that the Assessment Order for the Assessment Year 1992-93 clearly shows that the net taxable income of the deceased was Rs. 4,06,320/- while the earnings of the deceased for the Assessment Year 1993-94 up to the demise of the deceased were Rs. 1,68,130/- on which an advance tax of Rs. 69,000/- was paid, as per the income tax Return filed for the aforesaid Assessment Year.

6. Mr. Garkal, the learned Counsel for the Appellants vehemently contended that there was No. reason for the learned Tribunal to have disbelieved the testimony of PW4 - Smt. Harpreet Kaur with regard to the income of the deceased, more so, in view of the fact that the said testimony remained unshaken after cross-examination of the said witness and was supported by documentary evidence (Exhibit PW4/2 to Exhibit 4/4).

7. After scrutinizing the oral and documentary evidence on record, I am inclined to agree with the contention of the learned Counsel for the Appellants that the income of the deceased has not been properly assessed by the learned Tribunal. There is No. manner of doubt that in the financial year 1991-92 the deceased himself had deposited advance tax of Rs. 1,70,000/- and tax at source to the extent of Rs. 25,199/- had been deducted from the income of the deceased, that is, in all Rs. 1,95,199/- had been paid as tax by the deceased prior to his death. In such circumstances, to my mind, the learned Tribunal ought not to have assessed the income of the deceased to be in the sum of Rs. 5,000/- per month only. The deceased was a qualified Engineer and this fact is borne out from the passport of the deceased, Exhibit PW4/1. He was a Director in one private company and one public limited company and also a proprietor of M/s. Hydrolog Engineers as well as the proprietor of M/s. K.S. Chugh Associates at Ludhiana. He could not possibly have paid the advance tax to the tune of Rs. 2,00,000/- if his total earnings were Rs. 60,000/- per annum as assessed by the learned Tribunal.

8. While this Court is conscious of the fact that the income tax Returns filed after the death of a person cannot be taken into consideration for computing his income for the purpose of awarding compensation to his legal representatives, (See V. Subbulakshmi and Others Vs. S. Lakshmi and Another, it cannot be said that this is not an inflexible or rigid rule of thumb. In a case, such as the present one where an advance tax of almost two lacs had been paid by the deceased during his lifetime, it would be absurd to believe that he would have paid the tax in anticipation of his own accidental death. Thus, I see No. reason to disbelieve the income of the deceased as declared by him in the Assessment Year 1992-93. I am fortified in coming to the aforesaid conclusion from the Assessment Order of the Income Tax Authority, which shows that as per the return of the income filed by the deceased on 31.12.1991, the income of the deceased for the Assessment

Year 1991-92 as declared by him was Rs. 4,43,390/-. This declaration was, however, not accepted by the income tax Department, which assessed the taxable income of the deceased Assessee to be Rs. 4,64,588/- u/s 143 (3) of the income tax Act, 1961.

9. In view of the aforesaid, in my view, the income of the deceased on the date of his demise was not less than Rs. 3,77,610/- as declared by him for the Assessment Year 1992-93 (Exhibit PW4/2). After deduction of tax payable by him on the said income to the tune of Rs. 182,774/-, the income of the deceased thus works out to Rs. 1,94,836/-, which may be rounded off to ` 1,95,000/- for the sake of convenience. Deducting therefrom one-fourth of the income of the deceased towards his personal expenses in view of the fact that he had four dependant family members, the average annual loss of dependency of the Appellants comes to Rs. 1,46,250/-. The deceased was nearly 37 years of age on the date of the accident, and thus, the appropriate multiplier for augmenting the income of the deceased would be the multiplier of 15, which is also sought to be pressed into service by the learned Counsel for the Appellants for the reason that the multiplier of 15 is the multiplier approved of by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Thus calculated, the total loss of dependency of the Appellants comes to ` 21,93,750/- (that is Rs. 1,46,250/- x 15).

10. The learned Counsel for the Appellants has prayed for grant of funeral expenses and non-pecuniary damages in addition to the pecuniary damages to which the Appellants are held entitled. Accordingly, it is deemed expedient to award a sum of Rs. 7,000/- towards funeral expenses and last rites of the deceased and a further sum of Rs. 10,000/- each under the heads of loss of consortium, loss of love and affection and loss of estate of the deceased, that is, in all a sum of Rs. 22,30,750/- (Rupees twenty two lacs thirty thousand seven hundred and fifty only) is awarded to the Appellants.

11. In view of the aforesaid, the award amount is enhanced by a sum of Rs. 17,52,750/-. Interest at the rate of 7.5% per annum shall be payable on the enhanced amount from the date of the filing of the petition till the date of realization. Forty percent of the enhanced amount shall enure to the benefit of the widow and the remaining amount shall enure to the benefit of two children and the mother of the deceased in the proportion of twenty percent each. The Respondent No. 3 is directed to satisfy the award as modified hereinabove within one month of the passing of this order.

12. The appeal is allowed in the aforesaid terms. There shall be No. order as to costs.

13. The records of the Claims Tribunal be sent back forthwith.