

(2011) 05 DEL CK 0005

In the Delhi High Court

Case No : FAO 28 of 1996

Jai Narain and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) 4 TAC 485

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Manjeet Chawla, for the Appellant; Yashpal Rangi, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—By way of this appeal, the Appellants seek enhancement of the amount of compensation awarded to them by the Motor Accident Claims Tribunal in MACT Case No. 285/1985 on account of the death of Smt. Shanti Devi in a motor vehicular accident.

2. Before advertng to the facts necessary for the decision of the present appeal, it deserves to be noted that the records of the Motor Accident Claims Tribunal which were requisitioned by this Court, were stated to be missing from the record room of this Court as well as from the record room of the trial court. Learned Counsel for both the parties thereupon agreed that the case may be disposed of without the records and on the basis of the facts recorded by the Claims Tribunal in the award rendered by it.

3. On 14.09.1985 one Smt. Shanti Devi (hereinafter referred to as "the deceased") was traveling with a co-passenger in bus bearing No. HYR-3509, which fell in a ditch near Gopalpur village and turned turtle. While the co-passenger of Smt. Shanti Devi suffered injuries, Smt. Shanti Devi died in the accident. A claim petition was preferred by the Appellants-legal heirs of the deceased being her husband and three sons, wherein it was stated that the deceased was 43 years of age and was doing agricultural work, wherefrom she

was earning Rs. 700/- per month. Compensation in the sum of Rs. 3 lacs was claimed by the Appellants against the driver of the offending bus and its owners viz., the State of Haryana and the Haryana Roadways.

4. The factum of accident was not disputed by the Respondents but the allegations of negligence on the part of the bus driver were sought to be rebutted. The Claims Tribunal, on the basis of the evidence on record, awarded a sum of Rs. 1,68,000/- in favour of the Appellants with the direction that out of the amount of compensation awarded, the Respondent No. 3 (driver) would pay 20 per cent and the rest of the 80 per cent of the award amount would be paid by the Respondents No. 1 and 2 along with interest at the rate of 12 per cent per annum from the date of the petition till the date of realization.

5. Aggrieved by the aforesaid judgment and award of the Claims Tribunal, the Appellants have preferred the present appeal for enhancement, primarily on the ground that the income of the deceased has been grossly under-estimated by the Claims Tribunal and, accordingly, the quantum of compensation awarded on account of the loss of dependency is a very meager amount. It is also urged by Ms. Manjeet Chawla, the learned Counsel for the Appellant that the Claims Tribunal grossly erred in apportioning the liability to pay the compensation in the ratio of 80:20 between the Respondents No. 1 and 2 on the one hand and the Respondent No. 3-driver on the other. Ms. Chawla contends that the Respondent No. 3-driver was merely an employee of the Respondents No. 1 and 2 and, the Respondents No. 1 and 2 who were the owners of the offending vehicle were vicariously liable to pay the entire compensation. The Claims Tribunal ought to have held the liability of all the Respondents to be joint and several. Also, judicial notice should have been taken by the Claims Tribunal of the impracticability of recovering the award amount from the driver of the bus in question.

6. Another contention sought to be urged by Ms. Manjeet Chawla is that the Claims Tribunal, in the instant case, while awarding pecuniary compensation to the Appellants, has altogether ignored the fact that the Appellants were also entitled to non-pecuniary damages under the heads of loss of love and affection and loss of the estate of the deceased, and some amount towards the funeral expenses of the deceased. It is also contended that the multiplier adopted in the instance case ought to have been the multiplier of 15 as set out in the Second Schedule to the Motor Vehicles Act, instead of the multiplier of 14 adopted by the Tribunal.

7. Mr. Yashpal Rangi, the learned Counsel for the Respondent, sought to rebut all the aforesaid contentions of Ms. Manjeet Chawla and to support the award passed by the Tribunal. As regards the first submission of Ms. Chawla with regard to the assessment of the income of the deceased by the Claims Tribunal, Mr. Rangi submitted that though in the claim petition itself it had been claimed that the deceased was earning Rs. 700/- per month from agricultural work, as noted by the Claims Tribunal PW6, the husband of the deceased, in the course of his testimony, had inflated the income of the deceased and deposed that the

deceased was earning Rs. 1,000/- per month and was also doing domestic work for which he had to engage a maid servant. The learned Counsel also contended that there was no documentary evidence on record to suggest that the deceased was doing agricultural work, in as much as neither the "Jamabandi" nor the "Girdawari" had been produced by the Appellants to prove that they owned agricultural land and if so, how much. On the aspect of apportionment of liability between the owners of the offending bus and the driver thereof in the ratio of 80:20, Mr. Ranghi contended that the said apportionment was just and proper and called for no interference from this Court. With regard to omission of the Tribunal to award non-pecuniary damages, however, Mr. Ranghi does not, as indeed he cannot, dispute that no non-pecuniary damages had been awarded by the Claims Tribunal at all. Finally, on the aspect of multiplier, the contention of Mr. Ranghi is that multiplier for the age group of victims between 41 years and 45 years of age is the multiplier of 14, which has been held to be appropriate multiplier for the said age group by the Hon"ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

8. Having heard the counsels for the parties, I am of the view that the contention of the learned Counsel for the Appellant that the income of the deceased has been grossly under-estimated by the Claims Tribunal deserves to be accepted. In the claim petition, no doubt, it has been mentioned that the deceased was earning a sum of Rs. 700/- per month from agricultural work, but this could not have been interpreted by the Claims Tribunal to mean that the deceased was not rendering any household services to her family. The absence of "Jamabandi" and "Khasra Girdawari" on the record also do not present any difficulty in assessing the income of the deceased, for, it is nowhere stated in the claim petition that either the deceased or her husband owned any agricultural land. PW6 Jai Narain, the husband of the deceased, in his cross-examination, stated that he goes to the fields with the labourers but as he is suffering from asthma, he cannot work. He also stated that he sells agricultural produce to villagers. He further deposed that he had engaged two persons for doing the agricultural work at the rate of Rs. 500/- and Rs. 700/- per month respectively, one of whom he produced in the witness box, as PW8 Sh. Rajender.

9. It is a well known fact that the villagers not only till their own lands but also work on the land of others including relatives, neighbours, etc. The evidence of PW6-Sh. Jai Narain and the evidence of PW8 Sh. Rajender that the deceased was engaged in agricultural work, even assuming she owned no agricultural land of her own, cannot therefore be discarded as unworthy of credence, more so, as in paragraph 12 of its judgment the Claims Tribunal has itself noted that the family of the Appellants was dependent upon the agricultural crop sold in the village. Thus, on the basis of the evidence on record, in my view, the income of the deceased can safely be assessed to be Rs. 700/- per month from agricultural work and Rs. 1,000/- per month for the household services rendered by her to her family comprising of her husband and three children. I say so on the basis of the fact that it is on record that the husband of the deceased was a patient of

asthma who was incapable of working and, thus, the burden of running the household was almost entirely upon the shoulders of the deceased.

10. Thus, taking the monthly income of the deceased as Rs. 700/- per month and deducting one-fourth there from towards the personal and living expenses of the deceased, the loss of dependency of the Appellants comes to Rs. 525/- per month. Adding thereto Rs. 1,000/- per month towards the value of domestic services rendered by the deceased, the monthly loss of dependency of the Appellants works out to Rs. 1,525/- per month or say Rs. 18,300/- per annum. As regards the appropriate multiplier to be adopted for augmenting the aforesaid multiplicand, in the present case, I am at one with the contention of Mr. Rangi that the multiplier of 14 would be the appropriate multiplier. I say so for the reason that the said multiplier is in consonance with the judgment of the Supreme Court in the case of Sarla Verma (supra), wherein it is laid down by the Supreme Court that in order to ensure uniformity in the adjudication of motor accident claims cases, it would be best that all Courts and Tribunals adhere to the multipliers laid down in paragraph 19 of the said judgment. Thus calculated, the amount of compensation awardable to the Appellants on account of loss of dependency works out to Rs. 2,56,200/-. Adding to this sum, non-pecuniary damages in the sum of Rs. 5,000/- towards loss of consortium, Rs. 5,000/- towards the loss of love and affection, Rs. 5,000/- towards the loss of estate of the deceased and Rs. 4,000/- for the funeral expenses of the deceased, the total amount of compensation payable to the Appellants works out to Rs. 2,75,200/-, rounded off to Rs. 2,75,000/-.

11. On the question of apportionment of compensation, it is well settled that the owner of offending vehicle is vicariously liable for the accident caused by his driver in the course of plying of his vehicle. The Tribunal, therefore, in my opinion erred in apportioning 20% of the liability to pay the award amount on the Respondent No. 3-driver. The liability of all the Respondents ought to have been held to be and is accordingly held to be joint and several.

12. In the result, the award amount is enhanced from Rs. 1,68,000/- to Rs. 2,75,000/- (Rupees Two Lac and Seventy Five Thousand). Interest at the rate of 12% per annum as awarded by the Tribunal shall be payable on the award amount from the date of institution of the petition till the date of realization. The Respondents are directed to deposit the award amount with the Registrar General of this Court within 30 days from today, failing which they shall become liable to penal interest as awarded by the learned Tribunal.

13. The appeal is allowed in above terms. Records be sent back to the concerned Claims Tribunal.