

(1997) 02 DEL CK 0073

In the Delhi High Court

Case No : First Appeal No. 215 of 1987 and Civil Miscellaneous Appeal No. 729 of 1989

Kapila Uppal

APPELLANT

Vs

Kishan Dutt

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1998) 1 ACC 435 : (1997) ACJ 600 : (1997) 2 AD 824 : (1997) 41 DRJ 225

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : O.P. Goyal and N.K. Verma, for the Appellant;

Judgement

M.S.A.Siddiqui, J.

(1) The appellant No. 1 and her husband late V. P. Uppal had filed the claim petition before the Motor Accident Claims Tribunal, New Delhi. During pendency of the claim, V.P. Uppal died and his LRs (Appellant Nos. 2 to 4) were brought on record. The appellants, aggrieved by the quantum of compensation awarded by the Tribunal vide its award dated 4.7.1987 have preferred this appeal U/s 110-D of the M.V. Act. The respondents No. 1 & 2 have also filed cross objections against the impugned award.

(2) The brief facts of the case are that on 27-5-1979 at, about 1.30 a.m. Dr. Atul Kumar Uppal was coming from Safdarjung Enclave on his scooter bearing No. DHZ-8432. The scooter was driven by Dr. Atul Kumar Uppal and Anil Kumar Kakkar was sitting on the pillion seat. When they were passing at Shanker Road, from the opposite direction, a D.M.S. van bearing registration No. DHG- 5770, which was being driven by respondent No. 1 at an excessive speed, rashly and negligently, came on the wrong side of the road and knocked down the said scooter. Dr. Atul Kumar Uppal and Anil Kumar Kakkar were rushed to the Willington Hospital, where they succumbed to the fatal injuries sustained by

them in the said accident. The deceased Dr. Atul Kumar Uppal was the son of the claimants and had passed Mbbs examination and was doing internship in the Safdarjung hospital and after completion of his internship, he would have easily got a job for the initial salary of Rs. 1800.00 per month, the deceased, it is averred, would have continued to provide financial help to the claimants, who are his parents. On account of the said accident, the claimants, having lost the bread winner, filed the claim of Rs. 5 lacs before the claims tribunal.

(3) The claim was contested by the respondents. They denied that the accident took place on account of any rash or negligent act of the respondent No. 1 in driving the offending van. It was inter alia alleged that respondent No. 1 was driving the bus at a normal speed but it was the deceased, who came from the opposite direction driving his scooter at a fast speed on wrong side of the road and dashed against the van and as such he was himself responsible for the accident.

(4) The tribunal raised necessary issues and on appreciation of the evidence found that the accident was due to rash and negligent driving on the part of the respondent No. 1. It awarded Rs. 48,000.00 as compensation to the claimants towards the pecuniary loss occasioned by the death of the deceased Dr. Atul Kumar Uppal. Feeling aggrieved, the appellants have preferred this appeal claiming enhanced compensation. The respondents No. 1 & 2 have filed cross objections urging that the accident was the result of rash and negligent driving on the part of the deceased. Dr. Atul Kumar Uppal and as such they are not liable to pay any part of compensation.

(5) The first question to be considered is whether the Tribunal was justified in coming to the conclusion that the accident was the result of rash and negligent driving on the part of the respondent No. 1. The claimants have examined two eye witnesses, namely, Anil Kumar Ahuja (Public Witness 1) and Brij Bhushan (Public Witness 2) to prove that the accident took place on account of rash and negligent driving of the respondent No. 1. The evidence of Anil Kumar Ahuja (Public Witness I) shows that on 27-5-1979 at about 1.30 a.m. Dr. Atul Kumar Uppal was coming from Safdarjung Enclave on his scooter. The scooter was being driven by Dr. Atul Kumar Uppal and his friend (Anil Kumar Kakkar) was sitting on the pillion seat and they were being followed by him (Public Witness I) and Brij Bhushan (PW2) on scooter No. DLX 7734, which was being driven by Brij Bhushan (Public Witness 2). According to this witness, while the deceased's scooter was passing at Shankar Road, from the opposite direction the offending van at the speed of 70/80 Km. per hour came on the wrong side of the road and at this time, its right headlight was not turned on and that gave the impression as it was a two wheeler. He deposed that the said van dashed against the scooter as a result of which Dr. Atul Kumar Uppal and his pillion rider Anil Kumar Kakkar were thrown away at a distance of 5/6 yards causing fatal injuries to both. Testimony of Anil Kumar Ahuja (Public Witness 1) also finds sufficient corroboration from Brij Bhushan (Public Witness 2). Both these witnesses have been believed by the

tribunal and in my opinion, nothing has been elicited in their cross examination to shake their credit. It has to be borne in mind that the accident occurred in split of seconds and it is not expected of an eye witness to give graphic description of such accident.

(6) As stated above, the deceased's scooter was being followed by the scooter of Brij Bhushan (Public Witness 2). At the relevant time, Brij Bhushan (Public Witness 2) was driving the scooter and Anil Kumar Ahuja (Public Witness 1) was the pillion rider on the said scooter. Therefore, they were in best position to depose as to what had actually happened on the spot. There is nothing on record to show that they were trying to help the claimants in any manner or were not truthful witnesses. They are independent witnesses and their presence on the spot could not be doubted. It is significant that the respondent No. 1 Kishan Dull (DW 1) has also admitted their presence on the spot. It is the evidence of the respondent No. 1 (DW 1) that while his van was proceeding at a normal speed with its head lights turned on, the deceased driving the scooter from opposite direction came in high speed and dashed against the van resulting in the accident. On the contrary Anil Kumar Ahuja (Public Witness 1) and Brij Bhushan (Public Witness 2) have testified that at the relevant time the van was being driven at a very high speed and at that time its right head light was not turned on and that gave an impression as it was a two wheeler vehicle. In my opinion, that was a contributory factor. The aforesaid facts clearly go to show that the respondent No. 1 was in fact driving the offending van in such a manner as to create, an obvious and serious risk of causing physical injury to some other person who might happen to be using the road and that in driving in that manner the respondent No. 1 did so without having given any thought to the possibility of there being any such risk or, having recognised that there was some risk involved, had none the less gone on to take it. Keeping in view the totality of the circumstances of the case, in the light of the evidence on record there can be no manner of doubt that it was the respondent No. 1 (driver of the van) who was wholly to blame for the accident. The tribunal thus rightly attributed it to his negligence. I see no infirmity in the findings recorded by the tribunal and the same are affirmed.

(7) The next question relates to the quantum of compensation. Learned counsel for the appellant strenuously urged that the award of compensation as granted by the tribunal was too much on the lower side. That, the tribunal had not applied the correct principles in computing compensation and that once it was held that the accident was caused on account of sole negligence of the respondent No. 1, looking to the young age of the deceased and his future prospects in life the Tribunal should have granted appropriate compensation to the appellants. That award of Rs. 48,000.00 was to say the least extremely conservative and was too low. On a consideration of the evidence, the tribunal found that the deceased Dr. Atul Kumar Uppal had passed his Mbbs examination and was doing his internship in Safdarjung Hospital and was getting Rs. 450.00 as allowance. The deceased's classmate Anranjan Dillan (P.W.8) testified that

after completing internship he joined house job and was earning Rs. 900.00 to Rs. 1000.00 per month. Deceased's sister Dr. Mrs. Neelma Kapoor (P.W.10) deposed that after passing Mbbs examination, she joined as Sr. Resident doctor in Irwin Hospital in the pay scale of Rs. 700.00 to Rs. 1100.00 and used to draw a gross salary of Rs. 2,000.00 per month. She further testified that after Irwin Hospital, she joined Esi and was getting a salary of Rs. 3600.00 per month. On the basis of this evidence, the tribunal concluded that the deceased was a promising young doctor and would have got reasonably settled in life and would have earned nicely. The tribunal on the basis of the aforesaid evidence on record came to the conclusion that on account of the untimely death of Dr. Atul Kumar Uppal, the claimants suffered approximately a total monetary loss of Rs. 48,000.00 .

(8) At the outset, I must make it clear that the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , has laid down the basic principles governing the assessment of compensation and reiterated that multiplier method is the sound method, of assessing compensation; The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. It is now well settled that for computing compensation in motor vehicle accident cases, the loss has to be ascertained by just determining the monthly income of the deceased, then deducting there from the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier it was also observed in the case of Susamma Thomas (supra) that in adopting the proper multiplier, the future prospects of advancement in life and career should also to be sounded in terms of money to augment the multiplicand. Adopting the aforesaid principles the computation of compensation in the present case can almost be subjected to well settled mathematical formula.

(9) In the instant case, there is no scope for any dispute that the deceased Dr. Atul Kumar Uppal was a promising young doctor and he was cut short in the prime period of life at the age of 24 years by the accident. It has come in the evidence of Gurdeep S. More (P.W.11) that as an internee, he was getting an allowance of Rs. 550.00 per month. As stated above, the deceased was a promising young doctor. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating his gross income it will be unreasonable to estimate the loss of dependency on the present allowance of Rs. 550.00 per month. Having regard to the prospects of advancement in the future career, respecting which there is the evidence of Anranjan Dillan (P.W.8), Dr. Mrs. Neelima Kapoor (P.W.10), and Shri Gulshan Raj (P.W.7), it will not be inappropriate to make a higher estimate of monthly income of Rs. 1800.00 as the gross income. It is also averred in the claim petition that after termination of the deceased's internship in the hospital, his gross monthly income would have shot up to Rs. 1800.00 . From that gross monthly income atleast 1/3rd will have to be deducted by way of his personal expenses. That would roughly work out to

Rs. 600.00 per month and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs. 1800.00 per month, balance of Rs. 1200.00 would have been the average amount available to the family of the deceased. It is this figure which would be datum figure per month which on annual basis would work out to Rs. 14,400.00 . As the age of the deceased was 24 years at the lime of his death, the proper multiplier in the light of the decision of the Supreme Court in U.P.S.R.T. Corporation Vs. Trilok Chand J.T. 1996 (5) Sc 356, would 18. It has been emphasised in the aforesaid case that the multiplier cannot exceed 18 years purchase factor. This is the improvement over the earlier view of the Supreme Court in the case of Susamma Thomas (supra) that ordinarily it should not exceed 16. Thus, Rupees 14,400.00 multiplied by 18 will work out to Rs. 2,59,200.00 . This is the amount which the appellant No. 1, being mother of the deceased, would be entitled to get from the respondents. The compensation comes to Rs. 2,59,200.00 . To this may be added a conventional amount by way of loss of expectation of life. It has been observed by their Lordships of the Supreme Court in the case of Trilok Chandra (supra) that this conventional amount was pegged down to Rs. 3,000.00 but now having regard to the fall in the value of the rupee, it can be raised to a Figure of not more than Rs. 10,000.00 . Thus the total amount of compensation comes to Rs. 2,69,200.00 which the appellant No. 1 would be entitled to get from respondents. It is relevant to mention here that the appellant Nos. 2 to 4, who are legal representatives of the deceased claimant No. 1, do not constitute dependants. A brother or sister in the presence of mother is not entitled .to compensation on account of death of their brother.

(10) For the foregoing reasons, the appeal is allowed. The cross objections filed by the respondents are rejected. The impugned order passed by the Claims Tribunal is set aside. The respondents are directed to pay the total compensation of Rs. 2,69,200.00 to the appellant No. 1. The claim petition will stand allowed to that extent. On the said amount of Rs. 2,69,200.00 the respondents shall also pay interest @ 12% per annum from the date of the claim petition till payment of the aforesaid amount to the appellant No. 1. No order as to costs.