
(2010) 06 DEL CK 0020
In the Delhi High Court
Case No : MAC. APP. 82 of 2010

Kiran Bhardwaj and Another

APPELLANT

Vs

Reliance Gen. Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2011) 5 AD 488 : (2011) 124 DRJ 326

Hon'ble Judges : Reva Khetrpal, J

Bench : Single Bench

Advocate : V.K. Kalra, for the Appellant; Sameer Nandwani, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrpal, J.—By way of this appeal, the Appellants seek to assail the judgment and award dated 04.12.2009 passed by the learned Motor Accident Claims Tribunal on the ground that the Claims Tribunal has not awarded compensation to them in consonance with law.

2. The facts relevant for deciding the present appeal are that on 16.12.2007, one Shri Vikas/ Bhardwaj (hereinafter referred to as "the deceased") was going from Clock Tower to Shakti Nagar on G.T. Road, on his two wheeler scooter bearing No. DL-6SJ-1265, when suddenly a tempo bearing No. UP-14U-9107, while overtaking the deceased, hit his two wheeler scooter. Due to forceful impact, the deceased sustained grievous injuries. He was removed to Hindu Rao Hospital and thereafter to Sir Ganga Ram Hospital, where he was declared brought dead. A case bearing FIR No. 387/2007 (wrongly noted as 397/2007 in the award of the Tribunal) was registered under Sections 279/338/304A IPC at Police Station Roop Nagai against the Respondent No. 2, the driver of the alleged offending tempo.

3. On a claim petition filed u/s 166 read with Section 140 of the Motor Vehicles Act, 1988 for grant of compensation by the Appellants, who are the parents of

the deceased, the Claims Tribunal on the evidence on record held the Appellants entitled to receive compensation in the sum of 5,20,000/- with interest at the rate of 7.5% per annum from the date of the filing of the petition i.e. 07.02.2008 till its realization, inclusive of the interim award received by the Appellants.

4. Aggrieved by the aforesaid award of compensation, the present appeal has been filed by the Appellants on the ground that a very meager amount of compensation has been awarded by the learned Tribunal, keeping in view the fact that the deceased had a stable job and in due course of time, he would most certainly have made advancement in his career. According to the Appellants, the Claims Tribunal while computing the loss of dependency of the Appellants ought to have taken into consideration the future prospects of the deceased and the fact that in due course of time the income of the deceased would have increased considerably. Another contention of the Appellants is that the Tribunal erred in taking into account the age of the father of the deceased, whereas the age of the mother of the deceased ought to have been the governing factor for the choice of multiplier by the Tribunal.

5. After hearing Mr. V.K. Kalra, the learned Counsel for the Appellants and Mr. Sameer Nandwani, the learned Counsel for the Respondent No. 1, I am inclined to agree with, the submission of Mr. Kalra that keeping in view the evidence on record, the Claims Tribunal ought to have taken into consideration the future prospects of the deceased. I say so for the reason that the deceased was indisputably 23 years of age at the time of his accidental death and was earning Rs. 7,500/- per month as per the salary certificate issued by his employer and proved on record by PW1-Smt. Kiran Bhardwaj as Ex. PW1/1 and PW4-Shri Vinit Bhatia, Accounts Manager, M/s. Golden Highway Goods Carrier, who produced the wages/salary record of the deceased. PW4-Shri Vinit Bhatia categorically stated that the salary certificate Ex. PW1/1 had been issued from their office and was signed by Shri Gagandeep Singh Kalra, partner of M/s. Golden Highway Goods Carrier (Regd.). He further proved on record that the salary of the deceased was shown at Point-A to be Rs. 7,500/- per month in the four documents, Ex. PW4/1 to Ex. PW4/4, which were letters addressed by the firm to the Bank for transfer of amounts mentioned in the letters in the accounts of various employees mentioned therein. The said letters were accompanied by cheques of the amounts for which transfers were to be made and the said cheques were dated 04.09.2007, 28.09.2007, 01.11.2007 and 04.12.2007 and reflected the salary of the deceased for the months of August, September, October and November, 2007 respectively. He also proved on record the copy of the bank statement for the months of September, November and December, 2007 as Ex. PW4/ 5 to Ex. PW4/7.

6. In his cross-examination, the testimony of PW4-Shri Vinit Bhatia could not be shaken. He furnished on record the authority letter issued by the Company in his favour as Ex. PW4/R-1 and stated that apart from the record brought by him, his office was also having the ESI record and the bank record pertaining to the

deceased and that when a person was employed in their Company, an appointment letter was issued. He stated that at the time of joining of service, the salary of the deceased was Rs. 6,500/- per month and as in the case of every other employee, the salary of the deceased was transferred to his bank account. He further stated that Rs. 7,500/- was the net salary of deceased at the time of his death and that he was working in their Company as booking/billing clerk. He categorically denied the suggestion that the documents Ex. PW4/ 1 to Ex. PW4/7 were fabricated documents.

7. From the aforesaid evidence on record, it clearly emerges that the deceased had a stable and permanent job and that at the time of joining, his salary was Rs. 6,500/- per month, which had been increased to Rs. 7,500/- per month. PW2-Shri Chunni Lal, Assistant in ESI Subzi Mandi Branch produced the summoned lazer sheet of the deceased as Ex. PW2/1 and Ex. PW2/2 and testified that as per the record the deceased was a member of ESI from 31.05.2005. This clearly shows that from 31.05.2005, when the deceased had joined service with M/s. Golden Highway Goods Carrier (Regd.), he had made considerable progress till 16.12.2007, that is, the date of the accident. In a short span of about 21/2 years his salary had increased by 1,000/-per month. He was only 23 years of age at the time of his unfortunate demise and with the passage of time, he would have most certainly made rapid strides in his job. I am, therefore, inclined to accept the contention of the learned Counsel for the Appellant that the Claims Tribunal while assessing the income of the deceased for the purpose of computing the loss of dependency of the Appellants ought to have taken into account the future increase in the income of the deceased.

8. In this context, reference may be made to paragraphs 10 and 11 of the decision of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which are as under:

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In Susamma Thomas, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/-per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses. The decision in Susamma Thomas was followed in Sarla Dixit v. Balwant Yadav, where the deceased was getting a gross salary of Rs. 1543/-per month. Having regard to the future prospects of

promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2200/- per month. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India*, as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this Court assumed the income as Rs. 45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words Rs. actual salary Rs. should be read as Rs. actual salary less tax Rs.]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure there from should be made only in rare and exceptional cases involving special circumstances.

9. As regards the second contention raised on behalf of the Appellants that the age of the mother of the deceased should have formed the basis for the choice of multiplier to be applied to the multiplicand constituting the income of the deceased, I am inclined to agree with this contention as well. The mother of the deceased, who is in actual fact the legal representative of the deceased, must be presumed to be younger to his father and therefore it stands to reason that the loss of dependency of the parents must be determined with reference to the age of the mother of the deceased, who, in the normal course, was likely to outlive her husband.

10. Applying the aforesaid criteria and taking the annual income of the deceased to be 90,000/- (Rs. 7,500/- X 12) and adding 50% thereto towards the future prospects of the deceased, the income of the deceased for the purpose of computation of compensation works out to Rs. 90,000/- + Rs. 45,000/- (50% of the annual income) which equals to Rs. 1,35,000/-. Deducting one-half from the aforesaid income towards the personal expenses of the deceased in accordance with the law, the annual loss of dependency of the parents of the deceased comes to 67,500/- per annum. The mother of the deceased according to her Election Card Ex. PW1/2 was 45 years of age on the date of the accident and

thus, the proper multiplier in accordance with the age of the mother of the deceased would be the multiplier of Rs. 14 Rs. in consonance with the judgment of the Supreme Court in Sarla Verma Rs. s case (supra). Thus calculated, the compensation awardable to the Appellants on account of loss of dependency works out to Rs. 9,45,000/- (Rs. 67,500 x 14). Adding to the aforesaid amount Rs. 5,000/- towards the loss of the estate of the deceased and Rs. 10,000/- to each of the Appellants towards the loss of love and affection of the deceased as awarded by the Claims Tribunal, the total compensation payable to the deceased comes to 9,70,000/-. It may be mentioned that Rs. 3,000/- had already been paid by ESI to the Appellants towards the funeral expenses of the deceased and, therefore, the Tribunal rightly did not award compensation under this head.

11. The award amount accordingly stands enhanced from the sum of Rs. 5,20,000/- to Rs. 9,70,000/- with interest as awarded by the learned Tribunal. The apportionment of the compensation between the Appellants along with the interest shall be as under:

Appellant No. 1 - Kiran Bhardwaj 5,70,000/- along with proportionate interest thereon.

Appellant No. 2 - Virender Kumar Bhardwaj Rs. 4,00,000/- along with proportionate interest thereon.

12. Forty per cent of the compensation amount shall be released to the Appellants. The balance shall be kept in Fixed Deposit for a period of five years with the UCO Bank, Delhi High Court Branch in the respective names of the Appellants. The Appellants shall be at liberty to withdraw the aforesaid amount only on the maturity of the Fixed Deposit Receipts in their favour.

13. The appeal stands allowed in the above terms.

14. The records of the Claims Tribunal be returned to the Tribunal immediately.