
(1995) 09 DEL CK 0089
In the Delhi High Court

Lalita Malhotra and Others

APPELLANT

Vs

Vijay Pal and Others

RESPONDENT

Date of Decision : 12-09-1995

Acts Referred:

Citation : (1995) 2 ACC 688

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Judgement

C.M. Nayar, J.—The present appeal is directed against the Award dated October 22, 1981 passed by Shri S.P. Saberwal, Judge, Motor Accident Claims Tribunal, Delhi.

2. The appellants 1 to 3 are the widow and minor children and appellants 4 and 5 are the parents of the deceased Shri Asa Nand Malhotra who died on account of fatal injuries sustained in motor accident which took place on January 12, 1978 at about 9 P.M. The deceased was coming from his shop situated at Kucha Kahan Chand, Nai Sarak, Delhi and was proceeding to his house situated at Janakpuri, New Delhi as pillion rider on two-wheeler scooter No. HRQ-2905 driven by Sham Lal. When they reached Paharganj bridge a truck bearing No. PUG-6211 driven by Vijay Pal, respondent No. 1, came from the back side at a very fast speed and dashed against the scooter on which the deceased was traveling as pillion rider, with great force. It was alleged that the scooter driver Sham Lal was driving at a slow speed and at proper side of the road and neither any call nor any signal was given by the truck driver at the time of impact. It was further stated that the said driver, after knocking down the deceased, ran away from the spot of accident along with his truck. The deceased Asa Nand died due to rash and negligent driving of truck No. PUG-6211 on the part of respondent No. 1. The deceased was aged about 34 years on the date of accident and that he was enjoying a very good health. He was dealing in the business of cloth merchant and commission agent under the name and style of M/s. Mukesh & Co. 5656/57, Kucha Kahan Chand, Nai Sarak, Delhi and was a partner of the said firm to the

extent of 50 per cent share in the business. The income of the deceased was stated to be Rs. 2,500/- per month and it was stated that there were good chances in the expansion of business which would have enhanced the income further. The deceased left behind appellant No. 1 Smt. Lalita Malhotra as widow, Master Mukesh, Baby Dolly as minor son and daughter respectively as well as his aged parents. The said appellants filed claim petition u/s 110-A of the Motor Vehicles Act for the award of compensation of Rs. 10 lakhs on account of fatal injuries sustained by the deceased in the aforesaid accident.

3. The petition was resisted by respondent No. 3 M/s. Oriental Fire and General Insurance Co. Ltd. by filing written statement. The plea was taken that the said respondent had no knowledge of the alleged accident as well as of the date, time and place and no intimation in this regard was received. It was further stated that the driver of the offending truck was not holding a valid driving license and, Therefore, the Insurance Company was not liable to pay any compensation. The vehicle was insured in favor of M/s. Avtar Singh Jasvinder Singh i.e. respondent No. 2 for the period from December 20,1977 to November 19,1978 but it was stated that respondent No. 3 had no liability for the reason that a person in whose name the said policy was issued had no insurable interest in the offending vehicle.

4. Respondent No. 2 was proceeded ex-parte vide order dated February 1, 1979 as-despite service through publication he did not choose to appear. Respondent No. 1 was served and an Advocate had appeared on his behalf on many dates but on October 5, 1979 no one appeared for him despite service and he was also ordered to be proceeded against ex-parte vide order dated October 5, 1979.

5. The following issues were framed on the pleadings of the parties:

1. Whether the petitioners are the legal representatives of the deceased?
2. Whether the respondent No. 3 is not liable as pleaded in paragraph 23 of the written statement?
3. Whether the deceased died in the accident as a result of rash and negligent driving on the part of respondent No. 1 while driving truck No. PUG-6211?
4. If the aforesaid issue is proved in favor of the petitioners, to what amount of compensation, if any, are the petitioners entitled and if so, from whom and in what proportions?
5. Relief.

6. The appellants were held as the legal representatives of the deceased. There is no challenge to this finding and the same is, accordingly, affirmed.

7. Issue No. 2 was also decided in favor of the appellants and it was held that the truck in question was owned by respondent No. 2 and the same was driven by respondent No. 1 and it was established that the driver had a valid driving license. The question of negligence was next considered by the Tribunal and on

appreciation of evidence, it was held that the accident which resulted in the death of the deceased took place solely due to rash and negligent driving of truck No. PUG-6211 on the part of respondent No. 1. The learned Judge has clearly examined the evidence of the eye-witnesses PW2 Sham Lal as well as PW3 Mohd. Yameen who deposed that the deceased was run over by the rear wheel of the truck and their version was fully supported by medical evidence on record i.e. post-mortem report Ex. PW 5/1 in which it was mentioned that there were tyre marks on an area of 11" x 4" over the part of left side of chest and abdomen. The driver of the offending vehicle, respondent No. 1, was served and a Counsel had appeared on his behalf. However, he did not choose to contest the case. The Tribunal, Therefore, was quite correct to draw adverse inference in this regard. In the above background, there is no infirmity and illegality in the finding of the Tribunal that the deceased died as a result of rash and negligent driving on the part of respondent No. 1. This finding is accordingly affirmed.

8. The mode of assessment as well as quantum of compensation was considered by the Tribunal while disposing of issue No. 4. The deceased was 34 years of age and it was alleged in the claim petition that he was having an income of Rs. 2,500/- per month. The appellant-claimant Smt. Lalita Malhotra, however, deposed as PW6 and stated that the income of her husband was about of Rs.4,000.00/Rs. 5,000.00 per month and that he used to contribute Rs. 1,500-1,700/- for household expenses. She further stated that the deceased conducted cloth business and was partner in Mukesh & Co. having 50 per cent share. The income of the family had been reduced as she was admitted as a partner in the said firm to the extent of 40 per cent though her husband was a partner to the extent of 50 per cent. The learned Judge relied upon the documentary evidence consisting of Assessment Orders passed by the Income Tax Authorities for the assessment years 1973-74, 1975-76, 1977-78 and 1978-79 respectively wherein the income of the deceased was shown as Rs. 16,190/-, Rs. 24,863/-, Rs. 22,457/- and Rs. 32,210/- and taking an average for these years, the income of the deceased was assessed at Rs. 1,994/- per month. This estimate is based by taking into account the average of four assessment years and, Therefore, no fault can be found with the same as the Tribunal has arrived at these figures by taking into account the documentary evidence. The Judge, however, took into consideration the fact that the widow of the deceased, appellant No. 1 herein, was inducted in the partnership business and she was entitled to the extent of 40 per cent share i.e. Rs. 1,595.20. The appellants on that basis were held to have suffered a financial loss to the extent of Rs. 399/- per month only. One third of this amount was further deducted towards personal expenses of the deceased and the ultimate dependency was fixed at Rs. 266/- per month i.e. Rs. 3192/- per annum. The multiplier of 16 was adopted and the Tribunal awarded the compensation in the sum of Rs. 51,070/-.

9. The learned Counsel for the appellants has vehemently contended that the Tribunal has gravely erred in fixing the dependency after taking into account the share of the widow, appellant No. 1 herein, who was inducted into partnership to

the extent of 40 per cent after the death of the deceased. The facts are not in dispute. The subsequent partnership was entered into between the parties which included the widow of the deceased Smt. Lalita Malhotra and she was assigned 40 per cent share. The question now arises as to whether the entire amount which she was expected to receive by addition as a partner in the Deed of Partnership, entered into after the death of her husband can be set off against the contribution to the family. It has been argued that this approach can neither be sustained on the facts of the present case as well as on the basis of settled proposition of law that the dependency has to be assessed on the basis of loss to the estate of the deceased and not by taking into account the considerations which came into existence after the death of the deceased. In the present case, the widow was primarily a housewife catering to her minor children as well as to the parents of the deceased. She was not trained in the business and was only inducted so that part of the income which accrued to the deceased as a result of his being a partner in the firm, could be allocated to her. This, in any manner, cannot be the firm income in the hands of the widow as the new partnership was only in its infancy and the appellant No. 1 was not trained to handle the same. In this background it will be wrong to deduct the entire amount of Rs. 1595.20 which was assessed at the rate of 40 per cent of income from the partnership business from the contribution of Rs. 1994/- per month of the deceased to the family. The financial loss on that basis as assessed at Rs. 266/- per month is, accordingly, very negligible and cannot be sustained on the facts of the present case. This figure also does not take into account the future prospects of advancement in life and career and likelihood of further progress in the business which the deceased would have made if he had continued to live. While some allowance can be made for the income which will fall in the hands of the wife of the deceased, the same cannot be excluded in toto for the assessment of the contribution of the deceased towards the family. This income as on the date of the death cannot be held to be a certain and firm income in the hands of the widow who will not be in a position to say that she can run the family on the anticipated income after her induction in the partnership which only came into existence after the death of the deceased. Secondly, the deceased was fully participating in the business whereas it cannot be expected from his wife as she is to cater and to contribute her services to the family for looking after the minor children as well as the parents of the deceased. Therefore, on the present facts, it can be stated that the Tribunal has erred in deducting the income which appellant No. 1 was expected to receive as a newly inducted partner in the business. The assessment is wrong from another point of view. The earning member of the family has been lost in the prime of his life at the age of 34 years. The award of damages is not merely based on mathematical calculations with regard to the loss of income. There is definitely a vacuum in the family whose bread earner is lost so suddenly by the unfortunate accident and this damage cannot be rectified but can only be compensated by awarding the amount of damages which can be held to be just, fair and reasonable in the facts of each case.

10. In the present case, the deceased was 34 years of age and his income can safely be assessed at Rs. 2,000/- per month. The prospect of future advancement and likelihood of doing better in business cannot be ruled out. There is, however, no doubt that the appellant would have received some part of the income of the partnership in which appellee No. 1 was inducted to the extent of 40 per cent share immediately after the death of the deceased. Taking an overall view of the facts and circumstances of the present case, the dependency can be assessed at Rs. 1,500/- per month i.e. Rs. 18,000/- per annum as a loss to the appellants. The multiplier which has been adopted at 16 has not been seriously challenged before me and the amount of damages on this basis is assessed at Rs. 2,88,000/-. I, Therefore, assess that amount as payable to the appellants.

11. The next question which arises is with regard to the liability of the Insurance Company which is held as limited to the extent of Rs. 50,000/-. The Tribunal has examined the policy Ex. R. 1 which is filed on record. The learned Counsel for the Insurance Company has vehemently argued that this finding does not require any modification as the same is based on cogent grounds. He further argues that no such plea is taken in the memorandum of appeal by the appellants. The policy has been produced on record which clearly specifies the liability as limited to the extent, as provided to meet the requirements of Motor Vehicles Act, 1939. I have also examined the policy Ex. R. 1. The basic premium which has been paid is Rs. 125/-. There are three kinds of policy, as is contended by learned Counsel for the respondents. The first is "Act only" policy which covers the risk at public places, for which the premium is assigned as Rs. 84/-. The second is "public risk" policy for which the premium assigned is Rs. 125/- and the third is comprehensive policy which covers damage to the vehicles and the owners. The insured can pay additional premium and cover third party risk which can extend to unlimited amount. The perusal of the policy and accompanying documents in the present case do not, in any manner, indicate that the additional premium has been paid in the present case to cover the unlimited liability. Reference in this regard may be made to the judgment of the Supreme Court in *Sushil Kumar and Others Vs. State of Haryana and Others*, which deals with this aspect elaborately. Paragraph 6 may be reproduced in this regard :

6. We have accordingly perused the Photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs. 20,000/- contemplated by clause (b) aforesaid was covered. Our attention was invited by learned Counsel for the respondents to the circumstances that at the right hand corner on the top of page 1 of the policy the words "Commercial Vehicle Comprehensive" were printed. On this basis and on the basis that the premium paid was higher than the premium of an "Act only" policy it was urged by the learned Counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs. 20,000/- only. We find it difficult to accept this submission. Even though it is not permissible to use a vehicle unless it is covered at least under an "Act only" policy it is not obligatory for the owner of a vehicle

to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "Act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this behalf. Likewise, if risk of any other nature, for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefore. This is the requirement of the Tariff Regulations framed for the purpose....

12. This proposition is also reiterated in the recent judgment of the Supreme Court as reported in *New India Assurance Co. Ltd. v. Shanti Bai (Smt.) and Ors.* (1955)2 SCC 539.

13. The learned Counsel for the appellants has contended that the premium paid in the present case clearly covers the risk which cannot be held to be limited to the extent of Rs. 50,000/-. He has cited the judgment of this Court as reported in *Usha Sehgal and others Vs. Chhote Ram and others*, and *Krishan Lal Vs. Mohd. Din and others*, . The judgments in these cases were pronounced on the admitted facts that the Insurance Company neither produced photo copy of the policy nor office copy in support of the contention that their liability was limited. In the case of *Usha Sehgal and Ors.* (supra) the learned Judge held on the facts that the insurance policy was never on the record of the Trial Court. Therefore, these judgments will not be of any assistance to the appellants in the present case. On the present admitted facts, it cannot be said that the liability of the Insurance Company, respondent No. 3 herein, is unlimited. The liability is, accordingly, held limited to the extent of Rs. 50,000/-. The appellants also did not challenge this finding in the grounds of appeal. The finding of the Tribunal in this regard cannot be held to be illegal and the same is affirmed.

14. The appeal is allowed to the extent indicated above. The appellants are held entitled to the award of Rs. 2,88,000/-. They are also held entitled to interest at the rate of 15 per cent per annum from the date of petition before the Tribunal till realisation. The appellants shall be entitled to costs which are assessed at Rs. 2,500/-.