
(2010) 10 DEL CK 0226
In the Delhi High Court
Case No : M.A.C. App. No. 493 of 2004

Meenu Malhotra and Others	Vs	APPELLANT
United India Insurance Co. Ltd.		RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Citation : (2011) 1 TAC 47

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Navneet Goyal and Varun Kumar, for the Appellant; Pankaj Seth, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The Appellants have challenged the award of the learned Tribunal whereby the compensation of Rs. 8,75,000/- has been awarded to them.

2. The accident dated 5th January, 2001 resulted in the death of Anil Kumar Malhotra. The deceased was survived by his widow, son and father who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 34 years at the time of the accident and was working as a surveyor with the insurance companies. It was claimed that the deceased was earning Rs. 12,000/- per annum. The Claims Tribunal took the income of the deceased as Rs. 75,000/- per month, deducted 1/3rd towards personal expenses and applied the multiplier of 17 to compute the loss of dependency at Rs. 8,50,000/-. Rs. 25,000/- has been awarded towards loss of love and affection and loss of consortium. The total compensation awarded is Rs. 8,75,000/-.

4. The learned Counsel for the Appellants has urged following grounds at the time of hearing of this appeal:

(i) The income of the deceased be taken at Rs. 1,03,037/-.

(ii) The future prospects be taken into consideration.

(iii) Compensation be awarded for loss of estate.

(iv) Compensation be awarded towards funeral expenses.

5. The learned Counsel for the Respondents, in reply, submits that the deceased was aged 34 years at the time of the accident and the appropriate multiplier according to the judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , is 16 and, therefore, the multiplier is liable to be reduced.

6. With respect to the income of the deceased, PW-1 Jeevan Sharma from Bank of Baroda appeared in the witness box and proved the statement of account as Ext. PW1/1 to Ext. PW1/6. PW-2, Dalip Kumar from United India Insurance Company Limited appeared in the witness box and proved the certificate, Ext. PW2/1 to the effect that the deceased was working as a Surveyor with the company. Mr. Sushil Kumar Kundra, Assistant Manager from New India Assurance Company Limited appeared as PW-3 in the witness box and proved two certificates Ext. PW3/1 and Ext. PW3/2 with respect to the payments made by the company to the deceased and the tax deducted therefrom. New India Assurance Company Limited paid a sum of Rs. 2,300/- to the deceased during the period from 1st April, 2000 to 31st March, 2001 and Rs. 1,545/- during the period from 1st April, 2001 to 31st March, 2002. PW-5, widow of the deceased appeared in the witness box and deposed that the deceased was earning Rs. 12,000/- per month. She proved the empanelment letters of the United India Insurance Company Limited, New India Assurance Company Limited and Oriental Insurance Company Limited as Ext. P9 to Ext. P12, the payments and the documents relating to the income of the deceased as Ext. P13 to Ext. P32. PW-6, father of the deceased also proved the payments received by the deceased as Ext. PW6/1 to Ext. PW6/7. The total income of the deceased during the period from 1st April, 2000 to 5th January, 2001 (nine months) was Rs. 77,278/-. The said income was for a period of nine months and the annual income of the deceased on the above basis is taken at Rs. 1,03,037/-. 1/3rd is deducted towards personal expenses of the deceased and the multiplier of 16 is applied to compute the loss of dependency at Rs. 10,99,064/-.

7. With respect to the future prospects, the learned Counsel for the Appellant refers to and relies upon the judgment of the Hon''ble Supreme Court in the case of R.K. Malik and Another Vs. Kiran Pal and Others, , in which the Hon''ble Supreme Court has awarded future prospects in respect of a minor child. The relevant portion of the aforesaid judgment is reproduced as under:

14. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which

must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of this Court in the case of *Sarla Dixit v. Balwant Yadav* 1996 (2) T.A.C. 1; *The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others*, ; *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, ; *New India Assurance Co. Ltd. Vs. Charlie and Another*, and *United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.*, .

15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are Appellants herein, have not suffered any pecuniary loss. In fact, loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in *Taff Vale Rly. Co. v. Jenkins* as follows:

In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But, this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed u/s 163-A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable u/s 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [See *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, ; *United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.*, and *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, .

17. Reverting back to the factual position of the present case, the date of accident is 18th November, 1997. Prior to this, the Second Schedule of the Act was already introduced w.e.f. 14th November, 1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the

deceased was a child. It by necessary implication takes into account future prospects, inflation, price rise etc."

"31. A forceful submission has been made by the learned Counsels appearing for the claimants-Appellants that both the Tribunal as well as the High Court failed to consider the claims of the Appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ; and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospects should have been be addressed by the Courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since, they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M.S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M.S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court."

8. Following the aforesaid judgment, Rs. 75,000/- is awarded to the Appellants towards the future prospects.

9. The Claims Tribunal has awarded Rs. 25,000/- towards loss of love and affection and loss of consortium. However, no compensation has been awarded towards loss of estate. Rs. 10,000/- is awarded towards loss of estate. The Appellants are entitled to total compensation of Rs. 12,09,064/- (Rs. 10,99,064 + Rs. 75,000 + Rs. 25,000 + Rs. 10,000).

10. The appeal is allowed and the award amount is enhanced from Rs. 8,75,000/- to Rs. 12,09,064/-. The Claims Tribunal has awarded interest @ 9% per annum which is not disturbed on the original award amount of Rs. 8,75,000/-. However, on the enhanced award amount, the rate of interest shall be 7.5% per annum from the date of filing of the petition till realization. The shares of the Appellants in the enhanced award amount shall be as under:

Appellant No. 1 - 50% Appellant No. 2 - 40% Appellant No. 3 - 10%

11. The enhanced award amount alongwith interest be deposited by State Bank of India A/c Meenu Malhotra, Tis Hazari Court Branch through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 30 days.

12. Upon the aforesaid amount being deposited, the State Bank of India is directed to release the share of Appellant No. 3 immediately without restriction of FDR by transferring the same to his Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:

(i) Fixed deposit in respect of 10% of the amount for a period of one year in the name of Appellant No. 1.

(ii) Fixed deposit in respect of 5% of the amount for a period of two years in the name of Appellant No. 1.

(iii) Fixed deposit in respect of 5% of the amount for a period of three years in the name of Appellant No. 1.

(iv) Fixed deposit in respect of 5% of the amount for a period of four years in the name of Appellant No. 1.

(v) Fixed deposit in respect of 5% of the amount for a period of five years in the name of Appellant No. 1.

(vi) Fixed deposit in respect of 5% of the amount for a period of six years in the name of Appellant No. 1.

(vii) Fixed deposit in respect of 5% of the amount for a period of seven years in the name of Appellant No. 1.

(viii) Fixed deposit in respect of 5% of the amount for a period of eight years in the name of Appellant No. 1.

(ix) Fixed deposit in respect of 5% of the amount for a period of nine years in the name of Appellant No. 1.

(x) Fixed deposit in respect of 5% of the amount in the name of Appellant No. 2 be kept in fixed deposit till he attains the age of 18 years.

13. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of Appellant No. 1.

14. Withdrawal from the aforesaid account shall be permitted to Appellant No. 1 after due verification and the Bank shall issue Photo Identity Card to Appellant No. 1 to facilitate identity.
15. No cheque book be issued to Appellant No. 1 without the permission of this Court.
16. The Bank shall issue Fixed Deposit Pass Book instead of the FD Rs to the Appellants and the maturity amount of the FD Rs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FD Rs.
17. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
18. Half yearly statement of account be filed by the Bank in this Court.
19. On the request of the Appellants, the Bank shall transfer the Savings Account to any other branch according to the convenience of the Appellants.
20. The Appellants shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322).
21. List for compliance on 3rd December, 2010.
22. Copy of the order be given dasti to Counsel for both the parties under the signatures of the Court Master.
23. Copy of this order be also sent to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) under the signature of Court Master.