
(2007) 02 DEL CK 0160
In the Delhi High Court
Case No : FAO No. 96 of 1997

Mrs. Jasbir Kaur and Others		APPELLANT
	Vs	
Sh. Rakesh Kumar and Delhi Transport Corporation		RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2007) 1 ILR Delhi 80

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; J.N. Aggarwal and Banamali Shukla, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present appeal has been filed by the appellants against the impugned judgment dated 11th December, 1996 passed in suit No. 614/1992 by Sh. Rakesh Kapur, Judge, Motor Accidents Claims Tribunal, Delhi, wherein a sum of Rs. 2,65,200/- was awarded to the appellants on account of death of Manjeet Singh in a road accident.

2. Brief facts of the case are that on 6th October, 1992 at about 9.00 a.m. deceased Manjeet Singh was driving two wheeler scooter No. DDM-335 and when he reached the round about at Rama Road, Patel Road, a DTC bus No. DHP-3915 plying at route No. 820, came from behind at a very fast speed. This bus first of all hit a three wheeler scooter which over-turned and thereafter the said bus hit the scooter of the deceased. The scooter of the deceased was completely crushed and deceased died at the spot.

3. The factum of accident and the fact that respondent No. 1 was driving the bus in a rash and negligent manner are not in dispute. The only question raised in the present appeal is as to whether the compensation awarded is much less than the reasonable.

4. It has been argued by learned Counsel for the appellant that the learned Tribunal erred in assessing the monthly income of the deceased at Rs. 2,500/-, in fact the deceased was earning much more than this amount and as such monthly income of deceased would not have been less than Rs. 4,000/-. The learned Tribunal ignored the income tax return Ex.PW-3/E which was filed for the assessment year 1993-94. The price index should ought to have been taken consideration by the learned Tribunal and the 1/3rd deduction is on the higher side. The multiplier applied in this case was of 13 years whereas, as per Second Schedule of Motor Vehicles Act, 1988 the multiplier ought to have been of 17 years. Learned Counsel in support of his contention has cited the decision of Supreme Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, in which it has been observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand.

5. On the other hand, it has been argued by learned Counsel for the respondents that the deceased was more than 33 years at the time of the accident, which is clear from the school leaving certificate which is Ex.PW-3/G. The learned Tribunal rightly rejected the income tax return Ex.PW-3/E, since the same was filed much after the death of the deceased. As per income tax return Ex.PW-3/D, filed on 11th June, 1992, i.e. four months prior to death of the deceased, which is an authenticated document the learned Tribunal rightly considered it. According to this document, the annual income of deceased was Rs. 30,490/- and, thus, his monthly income was assessed at Rs. 2,500/-

6. As per statement of wife of the deceased who has appeared in the witness box of the PW-3, the deceased was carrying the business along with his brother. In cross-examination, PW-3 admits that in the shop run by her husband, his brother Gurcharan was also with him. Thus, from this shop, income accrued to deceased as well as to his brother and as such there was sharing of the income.

7. The multiplier of 13 years in this case has been adopted by the learned Tribunal in view of the various decisions of the Apex Court and as per decision in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Second Schedule of Motor Vehicles Act, 1988 suffers from several defects and Courts and Tribunals cannot go by the ready reckoner. This schedule can only be used as a guide and the selection of multiplier cannot be solely dependent age of the deceased. Hence, there is no force in this appeal and the compensation awarded by the learned Tribunal is just and reasonable and the trial court order does not call for any interference.

8. As per averments made in the petition, the age of the deceased has been mentioned as 30 years. However, appellants themselves have placed on record the school leaving certificate, Ex.PW-3/G. According to it, the date of birth of the deceased is 2nd May, 1959. The deceased has died on 6th October, 1992. As such, at the time of the death, deceased was about 33 and half year.

9. Coming to the income of the deceased, it has been mentioned as Rs. 5000/- per month, in the petition. PW-3, (widow of the deceased) has stated that total income of her husband from business was Rs. 7,000/- per month and he used to give her Rs. 4,000/- to Rs. 5,000/- per month for running the house hold.

10. The appellants have placed on record, income tax returns of the deceased Ex.PW-3/C to Ex.PW-3/E. Ex.PW-3/E was filed on 13th July, 1993, i.e. about nine months after the death of the deceased, which is not relevant in this case. As per Ex.PW-3/D, filed on 11th June, 1992 (four months prior to the death of the deceased) income of deceased was assessed at Rs. 30,490/- per annum. Thus, the monthly income of deceased comes to Rs. 2,500/-approximately.

11. It is well settled that the persons can tell lie but document cannot and when there is any documentary evidence, no amount of oral evidence to that effect can be considered. The income of the deceased, was rightly assessed at Rs. 2,500/- per month by the Tribunal and there is no ground to disturb this finding of the fact.

12. Now, coming to the question as to what multiplier should have been adopted in this case.

13. Section 168 of Motor Vehicles Act, 1988 provides that; Claim Tribunals may make an award determining the amount of compensation which appears to it to be "just".

14. In the case of UP State Road Transport(supra), the deceased aged about 26 years met with a fatal road accident. The tribunal applied a multiplier of 24 years whereas, the High Court applied the multiplier of 34 years. So the question was whether the Tribunal was right in applying the multiplier of 24 or the High Court was right in applying multiplier of 34. It was held that:

4. India is one of the countries with the highest number of road accidents. Motor accidents are everyday affairs.

A large number or claims for compensation for injury caused by road accidents are pending in various Motor Accident Claims Tribunal. In a fatal accident the dependants of the deceased are entitled to compensation for the loss suffered by them on account of the death. The most commonly practised method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. The Tribunals and High Courts have adopted divergent methods to determine the suitable multiplier. Even this Court has not been uniform; maybe because the principle on which this method came to be evolved has been forgotten. It has, therefore, become necessary to examine the law and to state the correct principles to be adopted.

5. The topic of compensation for causing death by negligent driving came up for serious discussion before this Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, The Court referred to the House of Lords decision

in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601 and quoted the following passage from the judgment:

The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered. ...The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other any pecuniary advantage which from whatever source comes to him by reason of the death.

6. The court also referred to the judgment by Viscount Simon in *Nance v. British Columbia Electric Rly. Co. Ltd.* in which the same principles were enunciated for estimating the damages, the method adopted however differed. Various factors that would enter the calculation as per Viscount Simon were set out in the judgment as under:

...at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime, and other circumstances; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate; and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation.

15. Further held:

15. We thought it necessary to reiterate the method of working out "just" compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in *Davies*, the loss has to be ascertained by first determining the monthly income of the deceased, then

deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate: X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make $2+2=4$ units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to $\text{Rs } 3500/7 = \text{Rs } 500$ per month. It can thus be assumed that Rs 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs 250. Thus the amount spent on the deceased X works out to Rs 1250 per month leaving a balance of $\text{Rs } 3500 - 1250 = \text{Rs } 2250$ per month. This amount can be taken as the monthly loss to X's dependants. The annual dependency comes to $\text{Rs } 2250 \times 12 = \text{Rs } 27,000$. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to $\text{Rs. } 27,000 \times 15 = \text{Rs } 4,05,000$. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs 3000 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. Thus the total comes to $\text{Rs. } 4,05,000 + 10,000 = \text{Rs } 4,15,000$.

16. So, keeping in view the above decision of the Apex Court, it is to be seen as to whether the compensation awarded by the learned Tribunal is just or not.

17. The deceased in the present case was aged about 33 and a half years and his income was Rs. 2,500/- per month. Assuming that the deceased was spending 1/3rd on his personal expenses, the loss on account of dependency comes to Rs. 1,700/- per month or in other words Rs. 20,400/- per annum. The learned Tribunal has applied the multiplier of 13 years which is quite reasonable and was the appropriate multiplier.

18. As such no infirmity can be found with the order passed by the learned Tribunal and the compensation awarded is just and reasonable. Hence, there is no force in the present appeal and the same is, hereby dismissed. No order as to costs.

19. Trial court record be sent back forthwith.