
(2007) 02 DEL CK 0019
In the Delhi High Court
Case No : FAO No. 185 of 1997

Mrs. Ruchie Seth and Others

APPELLANT

Vs

Mr. Purshotam Kumar, Shri Hardeva Ram and The Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2007) 94 DRJ 744

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Being aggrieved by the judgment dated 2.12.1996 passed by Smt. Kanwal Inder, MACT, Delhi, appellants have filed the present appeal, seeking enhancement of the compensation.

2. Learned Tribunal awarded a sum of Rs. 8,56,220/- as compensation to the appellants on account of death of Shri. A.K. Seth in a road accident.

3. Deceased A.K. Seth, was serving as Deputy Commissioner of Police in Delhi Police and on 24.4.1992, was driving his maruti car No. DIB 4649 at about 5.00 a.m. near Swami Nagar, DTC Bus Stop on main outer ring road while returning from his official duty at I.G.I. Airport, New Delhi. The deceased was going on correct side of the road, when all of a sudden a truck bearing No. HR-26-A-5448 came from behind, which was driven at a very fast speed, rashly and negligently by respondent No. 2 and overtook the car of deceased from its right side and suddenly swerved to his left side while applying sudden brakes. The truck almost came ahead of the car and the car struck against the rear of the truck and in that process the deceased sustained head injuries. The deceased was removed to the A.I.I.M.S., where he was treated but he succumbed to injuries in the hospital on

22.5.92. The truck is owned by respondent No. 1 and is insured with respondent No. 3.

4. Notice of this appeal was issued to all the respondents who put in appearance through their respective counsel and sought time for filing reply, but no reply was filed on behalf of any of the respondents.

5. On 20th July, 1999, none was present on behalf of appellants whereas Shri B.S. Mann, Advocate was present for respondents No. 1 and 2 and Shri. S.C. Dhanda, Advocate has put in appearance on behalf of the respondent No. 3 and the appeal was admitted.

6. Prior to that, none appeared on behalf of the appellants on 21.9.1998, 7.1.1999 and 10.2.1999.

7. On 2.2.2007, none was present and the matter was renotified for 5.2.2007 and on that date also none was present on behalf of the appellants and as such the case was reserved for judgment.

8. The decision of the learned Tribunal has been challenged by the appellants on various grounds. It is stated that the Tribunal erred in applying the multiplier of 10 years and it ought to have applied the multiplier of 18 years. Promotion avenues and the recommendation of Fifth Pay Commission were also not taken in to consideration. No weightage was given to the fact that family of the deceased was enjoying certain perks allowed by the Government by virtue of the service of the deceased. The deceased was expected to earn main fold income after his retirement. No compensation was allowed on account of total loss of the car involved in the accident and expenses incurred on the treatment while the deceased in the hospital, was also disallowed. The learned Tribunal did not allow the expenses incurred for engaging the attendant and for daily diet and the funeral expenses were disallowed wrongly by the Tribunal.

9. With regard to the factum of accident, the defence of respondent driver/owner is that deceased met with the accident of his own rash and negligent driving and not due to any fault or negligence on the part of the driver of the truck. The truck was in stationary position due to some mechanical defect.

10. The respondent driver has not led any evidence to substantiate his version regarding the accident. In fact, the respondents absented during the trial. As per finding of the learned Tribunal, the version of the appellants has been duly substantiated. I do not find any reason to differ with the conclusion arrived at by the learned Tribunal on this aspect.

11. Regarding age of the deceased, as per statement of PW-7, the date of the birth of deceased is 8.7.1950. The accident has taken place on 24.4.1992. So, at that time deceased was about 42 years old.

12. Now, coming to the monthly income of the deceased, he was posted as Deputy Commissioner of Police in Delhi Police and as per last pay certificate

Exhibit PW 6/1, his gross monthly salary was Rs. 8,724/- and after deductions, the net salary was Rs. 4,620/-.

13. The learned Tribunal has assessed the income of deceased as Rs. 12,500/- per month after taking into consideration increase in future income. It has been held by the learned Tribunal that:

Since the higher estimate will be taken into consideration for ascertaining multiplicand from the initial stage itself, when actually the gross salary was Rs. 8724/- with carry home salary of Rs. 4620/- and share of dependents being Rs. 2887.50, this higher estimate of Rs. 12,500/- per month will take care of increase in future income of the deceased. Taking monthly gross income of the deceased at the rate of Rs. 12,500/- per month means that annually his income would be Rs. 1,50,000/-. This is subject to normal deductions on account of income tax. After giving allowance for standard deductions and maximum savings u/s 80 of the income tax, income tax on the said sum comes to Rs. 16,000/-. After deducting the same, the income of the deceased comes to Rs. 1,34,000/-. One third thereof (i.e. Rs. 44,666/-) on account of his personal expenses and one eighth thereof (in sum of Rs. 5,582/-) towards his out of pocket expenses means that out of his earning, Rs. 50,248/- are to be deducted towards his personal expenses. After doing, so, a sum of Rs. 83,752/- p.a. is ascertained as dependency of the Legal Representatives which will be adopted as multiplicand.

The above mentioned multiplicand is to be multiplied by an appropriate multiplier which cannot exceed 18 and which is to be chosen with reference to the age of the deceased or dependents whichever is higher. In this case, the petitioners include wife and children of the deceased who are younger to him. Hence the age of the deceased will be determining factor. He was nearly 42 years old. In 1996 JT (5) SC 356, multiplier of 15 was considered appropriate to the deceased aged 35. In 1994 ACJ 1 the deceased was 39 years old and multiplier of 12 was held appropriate to his age. In the circumstances, at the most, multiplier of 10 can be adopted in the present case, where the deceased was 41 years 11 months old. Calculating in this manner, the compensation payable to the petitioners comes to Rs. 8,37,520/-. To this, sum of Rs. , 10,000/- is to be added as conventional sum by way of loss of expectation of life as per ruling of JT 1996 (5) SC 356 referred to above (para 14 thereof). In addition to this, the petitioners have been found entitled to Rs. 8,700/- on account of attendant charges. Total of all this comes to Rs. 8,56,220/-. They are further entitled to interest thereon. They are claiming interest @ 24% p.a. However, interest @ 12% p.a. has been awarded by Hon"ble Supreme Court of India in cases General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, and by Hon"ble High Court of Delhi in cases reported as 1993 (1) TAC 17, 1994(1) TAC 233, 1994(1) TAC 237 , Usha N. Dadlani and Others Vs. A. Kumar Oberoi and Others, , K.P. Singh Vs. Chiranjilal etc., and Rattan Lal Mehta Vs. Rajinder

Kapoor, . Therefore, interest @ 12% p.a. is being allowed in this case. The sum arrived at with interest thereon is in fact near about proportionate share of the dependents out of gross income of deceased as per Exhibit PW 11/1 and this sum duly invested will yield interest for maintenance of the petitioners. In the circumstances, it is held just compensation.

14. So, the question to be seen is, as to whether the compensation awarded by learned Tribunal is just or not.

15. 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".

16. In the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, 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 by the Apex Court that:

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

17. 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 $\text{Rs } 4,05,000 + 10,000 = \text{Rs } 4,15,000$.

18. In the present case, deceased was getting gross monthly salary of Rs. 8,724/- at the time of his death and after deductions his net carry home salary was Rs. 4,620/-. Learned Tribunal has taken care of increase in future salary and monthly income assessed as Rs. 12,500/- is on much higher side, but I am not disturbing this finding of fact.

19. Since, the deceased was aged 42 years at the time of his death, the multiplier of 10 years adopted by the learned Tribunal is quite reasonable, since it assessed the monthly income of the deceased on much higher side. The learned Tribunal has also rightly awarded Rs. 8,700/- on account of attendant charges and interest @ 12% per annum is quite justified. Accordingly, no infirmity can be found with the order of learned Tribunal. The present appeal is, therefore, dismissed. No orders as to costs.