

(2001) 02 DEL CK 0045

In the Delhi High Court

Case No : LPA 21 of 1989

Ms. Veena Rani and others

APPELLANT

Vs

DTC and others

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Citation : (2001) 1 ACC 450 : (2002) ACJ 740 : (2001) 3 AD 77 : (2001) 90 DLT 175

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. O.P. Goyal, for the Appellant; Mr. J.N. Aggarwal and Ms. Manisha Tyagi, for the Respondent

Judgement

Khan,(J)

1. One Kishan Lal Sethi, an Assistant in Finance Ministry and on deputation with Doordarshan was hit by a DTC bus on 28.12.1977 and succumbed to injuries two days later. Appellants (claimants) filed claim suit no. 231/1978 claiming compensation of Rs.5 lacs but MACT awarded them only Rs.60,000/- with 6% interest. While doing so, it assessed carry home salary of deceased at Rs.800/- per month and age at 36 years and applied a multiplier of 16 to determine compensation of Rs.1,00,800/- and then made some deductions from it for family pension and gratuity received by the widow and also for lump sum payment to claimants reducing the compensation to Rs.60,000/-.

2. Both sides took appeal against this award dated 23.9.1981. First Appellate Court, however, dismissed the appeal filed by respondent (FAO 65/1982) and allowed that of Appellants (FAO 103/1982) doing away with the deductions ordered by Tribunal and restoring compensation to Rs.1,00,800/- with 9% interest.

3. Appellants have now filed this LPA seeking more compensation on the ground that both Tribunal and First Appellate Court had disregarded prospects of

advancement in future career of deceased while determining his gross income despite evidence on record. It is submitted that Appellants had proved (Ex.PW-3/1) a chart containing future salary details of the deceased through Sh.D.P.Chopra, ADG, Doordarshan (PW-3) to show that average income of deceased was least assessable at Rs.1500/- P.M. but the courts below had ignored it. Appellants also complain that multiplier applied and rate of interest granted was low and want these to be raised to 34 and 12% p.a respectively.

4. Appellant's counsel Mr. Goyal cited some judgments of the Supreme Court including 1994 "ACJ 1 (Susamma Thomas) Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, and Rukmani Devi and Others Vs. Om Prakash and Others, to show that future prospects of the deceased were liable to be taken in regard while assessing his gross income. Therefore, all that remained to be seen was Whether the future prospects of the deceased could constitute a factor for determination of his gross income despite application of multiplier which would have the consequence of boosting up the multiplicand.

5. The question of determination of just and fair compensation awardable to the victim/s of an accident is no longer subject to any uncertainty and ambiguity. The manner and method is by now well established and thus involves assessing deceased's gross monthly income and deduction there from of such amount as he would have been spending on person for his maintenance and leaving remainder amount being spent on dependants. The annual dependency thus determined is then to be multiplied by a figure representing the proper number of year's purchase (multiplier) which in turn is determined by two factors-the rate of interest appropriate to stable economy and age of the deceased or of the claimant whichever is higher. It is also well settled by now by the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, that a multiplier cannot exceed 18 years purchase factor though amendment Act, 54/94 has brought in Sections 163-A and 163-B in Chapter XI of MVA, 1988 Along with a second schedule appended to first Section and a table fixing the mode of calculation of compensation and multiplier applicable to different age groups.

6. So far so good. But the question that still begs answer is how best to assess the gross monthly income of the deceased and what all was liable to go into it. Was it to include his earning at the time of his death only or his future prospects could also be reckoned to supplement the multiplicand for purposes of determining the net annual dependency.

7. The issue is squarely answered by the Supreme Court in Susamma Thomas's case (supra) in following words.

"Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the

future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1,032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2,000/- as the gross income."

8. It thus becomes settled that future income/career prospects of a deceased accident victim would constitute a relevant factor for being taken in account while assessing his average income and for the purpose of determining the annual dependency depending upon the facts and circumstances of the case and the evidence on record. Consequently there would be no occasion to reckon this factor where supportive evidence was lacking and in that case gross income of the deceased would be assessable on the basis of what he earned at the time of his death.

9. We accordingly hold that future prospects of advancement in life and career of the deceased accident victim could form a valid consideration/factor while assessing his/her gross income so as to work out the multiplicand to be capitalised by an appropriate multiplier to determine the just and fair compensation depending on the facts and circumstances of the case and evidence on record and regard being had to imponderables surrounding his/her remainder of life.

10. Applying all this to present case, it is the admitted position that the deceased was a Government employee holding more or less a stable job. Though his carry home salary at the time of death was Rs.800/- and odd per month, Appellants had brought on record vide Ex.PW1/3, containing the details of the salary etc. that he would have received if he had survived till his retirement. This document which was proved by the concerned Doordarshan Authority, Mr. Chopra PW3 indicated that deceased could be promoted as Section Officer in the next higher Scale of Rs.650-1200 and that he would have earned a salary of Rs.5.74 lakhs and odd if he had lived till his superannuation on 14.7.1999. Therefore, given regard to all the imponderables, it would not be out of place to take a reasonable view of his future prospects to assess his gross income and to estimate that he could have at least reached the maximum of his higher scale i.e. Rs.1200/- p.m. even if it was assumed that he would not last his full tenure. It would consequently be just and reasonable to assess his gross monthly income at Rs.1200/- P.M and to deduct 1/3rd from it from his personal expenses which when capitalized by multiplier of 16 would work out the annual dependency at Rs.9,600/- and which would raise the compensation amount to Rs.1,53,600/- and rounded up to 1,54,000/-

11. We find no warrant for hiking up the multiplier to 34 because in our view applied multiplier of 16 appears appropriate in the circumstances of the case. But this is not true of rate of interest which, we feel, was on the lower side and required to be increased to 12% p.a.

12. This appeal is accordingly allowed and appellants are found entitled to a compensation of Rs.1,54,000/- which shall be payable by respondent D.T.C. with 12% p.a. interest on the enhanced amount from the date of impugned judgment in FAO (18.1.89) to the date of payment. The D.T.C. is further directed to satisfy the remaining award within six months through a crossed cheque and on identifying claimant.