
(2008) 03 DEL CK 0294

In the Delhi High Court

Case No : MAC. App. No. 400 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Preeti Dudeja @ Sushma and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2008) 03 DEL CK 0294

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pradeep Gaur, for the Appellant; Sudarshan Rajan, Adv, for the Respondent

Judgement

Kailash Gambhir, J.—Feeling aggrieved with the impugned award, the appellant insurer of the offending vehicle has preferred the present appeal. The brief facts which led to the filing of compensation case by the claimants/respondent Nos. 1 to 4 inter- alias are that these respondent Nos. 1 to 4 had filed an application u/s 166 of the Motor Vehicles Act (as amended) seeking grant of compensation for the death of Mr.Mahender Dudeja who had died on 08.6.2005 at about 7.30 p.m. due to rash and negligent driving of offending bus bearing registration No. HR-69-2020 by respondent No. 5. The deceased Shri Mahender Dudeja wanted to board the said bus but the moment he stepped in, the bus came into motion prematurely and negligently as a result of which, the deceased fell down on the road and ultimately bus ran over him resulting into his death on the spot.

2. As per the case set up by the dependant members of the family, the deceased was working as a Manager in Sui Generics Technologies at 255, Aggarwal Plaza, Prashant Vihar, Rohini. He was 34 years of age and was earning a sum of Rs. 15,000/- per month. Respondent Nos. 1 to 4 sought compensation amount of Rs. 46,80,000/- with up to date interest and the Tribunal after taking into consideration the facts of the case and the evidence led by the parties including the documents placed on record found them entitled to a sum of Rs. 18,00,000/-

towards compensation amount. The offending vehicle is insured with the present appellant. Therefore, directions were given to the appellant to pay the award amount along with interest at the rate of 7.5% per annum within 30 days from the passing of the award and this order of the Tribunal has been assailed by the appellant in the present appeal.

3. The challenge by the appellant to the award is chiefly on three grounds.

4. The first contention of counsel for the appellant is that the Tribunal has wrongly taken into consideration the income of the deceased at Rs. 1,50,000/- per annum without their being any basis or evidence to support such income. The second contention of the appellant is that the Tribunal has not followed the principles laid down by the Hon'ble Supreme Court in the celebrated case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and has taken into consideration the assumed income of the deceased which he would have earned at the end of his working life. Thirdly, the appellant is aggrieved by wrong application of the wrong multiplier of 17 instead of 13 years. On all the said three issues, I have heard Mr. Pradeep Gaur, counsel for the appellant and Mr. Sudarshan Rajan, counsel for the respondent at considerable length.

5. Mr. Pradeep Gaur, counsel for the appellant has laid great stress on the judgment of the Apex Court in Sarla Dixit's case (Supra) and contended that the formula laid down in the said case should have been considered by the Tribunal in which there is an inbuilt mechanism of considering the future prospects as well. Counsel also contended that as per the tax returns placed by respondent Nos. 1 to 4, the last drawn income of the deceased for the year 2003-2004 was Rs. 1,05,600/- whereas for the year 2001-2002 it was Rs. 94,500/- and for the year 2002-2003 it was Rs. 94,823/- and the safest method could have been to take average income of all the three years instead of considering only the income of the last year.

6. Counsel for the appellant also contended that there is no basis to take into consideration the income of Rs. 1,50,000/- merely by assumption that the deceased would be earning at least this amount at the end of his working life had he not met with the accident. Counsel further contended that such criteria devised by the Tribunal is not supported by the dictum of Sarla Dixit's case.

7. Counsel also contended that in Sarla Dixit's case and in various other judgments of the Supreme Court where the Court has given the benefit of future prospects, the multiplier as laid down in the Second Schedule has not received an acceptance. In all such cases, rather the Supreme Court has invariably reduced the multiplier, counsel contended. Counsel further contended that the multiplier of 13 would be appropriate multiplier since the age of the deceased on the date of accident was 34 years. In support of his contentions, counsel for the appellant has relied upon the following judgments:

1. Managing Director, Tamil Nadu State Road Transport Corporation Ltd. v. K.S. Bindu and Ors. 2006(1) TAC 1;

2. Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ; and

3. New India Assurance Co. Ltd. v. Smt. Kalpana and Ors. 2007(1) LRC 208

8. Mr. Sudharshan Rajan, counsel appearing for the respondent vehemently refuted the above contentions of counsel for the appellant and submitted that there is no illegality or perversity in the award passed by the Tribunal. Counsel contended that the award passed by the Tribunal is absolutely just and fair in the facts and circumstances of the case. Counsel for the respondent has drawn my attention to the income tax return of the deceased for the assessment year 2005-2006, wherein income of the deceased has been shown as Rs. 1,25,000/-. Counsel further contended that the deceased was not doing any business and was in service and the mean of his income for the past three years cannot be taken into consideration as while being in employment the deceased would have comparatively progressed more in his future life and would have earned much more than he was earning at the time of his accident. Counsel, thus, contended that there was nothing illegal on the part of the Tribunal to arrive at the income of Rs. 1,50,000/- which was most appropriate, keeping in view the age of the deceased and his promising career ahead. Counsel further contended that the deceased is survived by his widow and two minor children, Therefore, there was nothing wrong on the part of the Tribunal in applying the multiplier of 17 which otherwise is in accordance with Second Schedule of the Motor Vehicles Act. Counsel further urged that only in exceptional circumstances, there can be a deviation from the Second Schedule of the Motor Vehicles Act. In support of his arguments, counsel has invited my attention on the three Judges Bench decision of the Supreme Court reported in Smt. Supe Dei and Ors. v. M/s. National Insurance Co. Ltd. and Anr. JT 2002 (Supp) 1 SC 451, wherein it is mentioned that IIInd Schedule can be taken as a good guide while determining the amount of compensation.

9. The counsel for respondents has also placed reliance on following judgments in support of his contentions:

1. Supe Dei and Ors. v. National Insurance Co. Ltd. JT 2000 (Supp) 1 SC 451

2. Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another,

3. Smt. Sarla Dixit and another Vs. Balwant Yadav and others,

4. U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,

10. I have heard Learned Counsel for both the parties and have perused the record. On the issue of income of the deceased at the time of accident and future prospects of the deceased, I find that the Tribunal has committed error in assessing the income of the deceased without taking note of the Income Tax returns of the deceased duly proved on record. In the facts and circumstances of the case, the Tribunal was also incorrect in considering future prospects of the

deceased on the basis of the income tax returns of the deceased of the assessment year 2002-2003; 2003-2004 and 2004-2005. On perusal of the income tax returns of the deceased, it becomes clear that in the year 2001-2002, the total income of the deceased was Rs. 94,500; in 2002-2003, it was Rs. 94,823/- and in 2003-2004, it was Rs. 1,05,600/-. It is the settled position of law that the net income of the deceased at the time of the death is taken as the income of the deceased for the purpose of computation of compensation. In the instant case the tribunal ought to have assessed the income of the deceased as per the Income Tax Return of the year 2003-2004 and the same has not been done by the tribunal, rather the tribunal took Rs. 10,000/- as the monthly income of the deceased without any basis. The approach of the Tribunal in this regard is totally erroneous. The income of the deceased is, thus, assessed at Rs. 1,05,000/- and after deducting the tax of Rs. 2,200/- the net income would come to Rs. 1,03,400/- per annum or Rs. 8,617/- per month.

11. As regards the future prospects, it is no more rest integra that mere bald statement on the income of the deceased cannot be blindly accepted as such assertions are required to be proved by leading cogent and reliable evidence before the tribunal. Also the claimants have to prove by way of evidence that the deceased at the time of his death was in a particular trade, profession or an occupation where he was gainfully employed and had he not met with an accident, he would have earned more. In this regard the relevant portion of para 8 of the judgment in the case of *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, is reproduced below:

The mere assertion of the claimants that the deceased would have earned more than Rs "8000 to Rs" 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

12. In the instant case to claim benefit of future prospects, sole reliance was placed on the income tax returns filed by the deceased. On the basis of increased income as reflected in the annual returns the Tribunal assumed earnings of the deceased at Rs. 1,50,000/- per annum at the end of his working life. This assumption on the part of the Tribunal has no justification. In any event of the matter, the emphasis of the counsel for the appellant was that in such facts, the criteria as laid down in the *Sarla Dixit's* case could have been applied. Hence, I find infirmity in the tribunal's taking Rs. 1,50,000/- as income of the deceased. The tribunal cannot act on its own whims and fancies. The Apex Court has laid down certain principles of assessment of compensation and the same should be followed by the tribunals.

13. Only on proof of future prospects, the tribunal should have awarded future prospects in the instant case. I find infirmity in the award in this regard.

14. After applying the criteria laid down in Sarla Dixit's case, the income of the deceased would come to Rs. 12,925/-. After deducting 1/3rd towards personal expenses, the financial dependency would come to Rs. 8,607/- p.m. The other contention of the appellant also falls face down as in various judgments the Hon'ble Apex Court has observed that the Second Schedule to the Motor Vehicles Act, 1988 is a safe guide to apply relevant multiplier for the purpose of computation of compensation, Therefore, I see no reason why multiplier of 17 should not be taken as the appropriate multiplier in the instant case, which has been applied by the Tribunal as per the IIInd Schedule.

15. The Apex Court in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, has held as under:

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

16. On the basis of proper appreciation of documents on record and after hearing counsel for the parties I feel that the award passed by the tribunal is just, fair and reasonable as regards the multiplier.

17. In view of the above discussion, the monthly dependency comes to Rs. 8,607/- per month and the annual dependency would come out at Rs. 1,03,284/- and after applying multiplier of 17 the compensation towards dependency shall come to Rs. 17,55,828/-. Tribunal has granted Rs. 80,000/- towards loss of love and affection and Rs. 20,000/- towards funeral expenses, Therefore, the total compensation comes to Rs. 18,55,828/-. On the basis of the above discussion, the compensation is dwindles down to Rs. 18,55,828/- from Rs. 18,00,000/-, thus in the interest of justice, no interference is made in the award.

18. As per the order dated 12.07.2007, This Court had stayed the operation of the impugned award, with the directions to the appellant to deposit 50% of the impugned award along with accrued interest within four weeks from the order dated 12.07.2007. The said amount shall be released in favor of the respondents and the remaining amount shall also be paid to the respondents with up to date interest @ 7.5% per annum by the appellant. With the above directions, the present appeal is remitted back to the Tribunal to pass necessary directions for the apportionment of the entire compensation amount in favor of the claimants/ respondent Nos. 1 to 4.