

(2012) 01 DEL CK 0455

In the Delhi High Court

Case No : MAC App. 179 and 313 of 2010

Neelam Prashar and Others

APPELLANT

Vs

Mintoo Thakur and Others
 National Insurance Co. Ltd.
Vs Neelam Prashar and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 4 ILR Delhi 520

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : S.N. Parashar, in MAC app. 179/2010 and Mr. Joy Basu, in MAC app. 313/2010, for the Appellant; Joy Basu, for R-3 in MAC APP. 179/2010 and Mr. S. N. Parashar in MAC APP. 313/2010, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—By these two Cross Appeals, the parties impugn the judgment dated 19.01.2010 whereby a compensation of Rs. 1,03,68,744/- was awarded for the death of Atul Prashar aged 37 years, who died in a motor accident, which took place on 18.01.2008. The MAC. APP. No. 179/2010 has been filed by the legal representatives of the deceased i.e. Neelam Prashar and others (hereinafter referred to as the "Claimants") whereas MAC. APP. No. 313/2010 has been preferred by the National Insurance Co. Ltd. (hereinafter referred to as "insurer") disputing the negligence on the part of the driver of Maruti Esteem bearing Registration No. DL-2CAC-5813 and for reduction of the amount of compensation awarded by the Motor Accident Claims Tribunal (the Tribunal). NEGLIGENCE:-

It is urged by the learned counsel for the Insurer that in order to prove negligence the Claimants examined PW-2 Dushyant Vasudev and PW-4 Ashish Aggarwal. The accident took place at about 6:30 AM. Both PW-2 & PW-4 were working in separate offices (though in the same vicinity) & their offices would start at 9/ 9:30 AM. Thus, their presence at the time of the accident was highly improbable. If the testimony of these two witnesses is taken off the record there

is nothing to establish the negligence on the part of the driver of Maruti Esteem Car No. DL-2CAC-5813. It is well settled that in a claim petition negligence is required to be proved only on the test of preponderance of probabilities. The FIR in this case was registered on the basis of the statement of PW-2. The offending vehicle was seized from the spot. The driver of the Esteem Car No. DL-2CAC-5813 was not produced by the Insurer to rebut the testimony of PW-2 and PW-4. PW-2 gave an explanation that he was called early in the office because some guests were scheduled to come. In the absence of examination of the driver to rebut PW-2 and PW-4's testimonies their presence at the spot at the time of accident cannot be doubted merely on the assumption that they could not have proceeded for the office early and that too in the same vehicle. In my view, on the test of preponderance of probabilities, PW-2 and PW-4's testimonies that, the accident was caused on account of rash and negligent driving by the driver of Car No. DL-2CAC-5813 has to be accepted. I hold that the finding of fact reached by the Tribunal on this count cannot be faulted. QUANTUM OF COMPENSATION:-

2. For the purpose of loss of dependency the Tribunal took the deceased's income to be Rs. 78,477/- after deducting the conveyance allowance of Rs. 800/- per month and medical pay of Rs. 1,250/- per month. It is urged by the learned counsel for the Claimants that the medical pay was for the benefit of the deceased and his family members and should have been taken into consideration as part of the salary. It is submitted that the multiplier of "13" selected by the Tribunal as against "15" suggested in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, is on the lower side. The compensation towards loss of love and affection of Rs. 10,000/- is also very low and needs enhancement.

3. Per contra learned counsel for the Insurer submits that a deduction of Rs. 4,484/- on account of payment towards provident fund should have been made by the Tribunal as the said money did not come in deceased's hand to be spent on the family.

4. It is contended that in high income bracket when the multiplicand is high a lower multiplier can be selected to award just compensation. Reliance is placed on United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

5. It is well settled that for determination of loss of dependency, the amount paid to the deceased by his employer by way of perks should be included in the monthly income (National Insurance Co. Ltd. v. Indira Srivastava, I (2008) ACC 162 (SC); National Insurance Company Ltd. Vs. Smt. Saroj and Others, The deduction of Rs. 4,484/- as shown in the salary slip Ex. PW-1/2 was for the future benefit of the family as this amount along with interest was payable to the deceased. Similarly, medical pay of Rs. 1,250/- was also given for taking care of the medical needs of the deceased and his family members. The Tribunal fell into error in ignoring this amount of Rs. 1,250/-, of course, deduction towards income

tax is liable to be made as the net income of the deceased is the starting point for calculation of loss of dependency.

6. The deceased was working as a Senior Project Leader with M/s. Saksoft Ltd. He was a young person of 37 years and being in permanent employment had good future prospects. The Tribunal did not commit any error in adding 50% of the deceased's income towards his future prospects.

7. As far as selection of multiplier is concerned at the age of 37 years the appropriate multiplier would be "15" whereas the Tribunal took the multiplier of "13". The learned counsel for the Insurer tried to justify the lower multiplier on the ground that in case of higher multiplicand a lower multiplier can be selected. In the case of Patricia Jeam Mahajan (supra) the learned Single Judge applied the multiplier of "10", which was increased to "13" on the basis of the judgment in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, decided by a Division Bench of this Court. The Supreme Court reduced the multiplier to "10". In para 19 and 20 of the report it was observed as under:-

19. In the present case the deceased was 39 years of age. His income was Rs. 1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. 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. 1032 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. 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs. 1400 per month or Rs. 17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs. 17,000 x 12 = Rs. 2,03,000) to which is added the usual award for loss of consortium and loss of the estate each in the

conventional sum of Rs. 15,000.

20. We think, in all, a sum of Rs. 2,25,000 should be a fair, just and reasonable award in the circumstances of this case. The claim made for loss of future earnings of Rs. 50,000 on the prospects of future employment in USA was rightly negative by the Tribunal. The award under this head is clearly unjustified in the facts of the case.

8. It is important to note that in Patricia Jean Mahajan (supra) the dependents were parents aged 69/ 73 years and two daughters aged 17 and 19 years. The parents were residents of India whereas the daughters were residents of USA. The compensation on the multiplier of "10" came to be Rs. 10,38,00,000/-. In the case in hand the deceased left behind a minor son apart from a widow and the aged parents. The compensation awarded in this case was just above Rs. 1,00,00,000/-, which cannot be said to be astronomical. In the circumstances, there is no justification to apply a lower multiplier than the one suggested in Sarla Verma (supra).

9. If the deceased's father is not considered as a dependant because there is no evidence on this aspect; the loss of dependency comes to Rs. 80,527 - 800 + 50% x 12 - 3,79,524/- (income tax) - 1/3rd x 15 = Rs. 1,05,55,620/-.

10. Thus, it may be noticed that there is marginal difference in the amount of compensation of Rs. 1,03,38,744/- awarded by the Tribunal and the compensation of Rs. 1,05,55,620/-, which comes on the application of multiplier of "15". The compensation awarded by the Tribunal, therefore, is just and reasonable and does not call for any interference. Both the appeals are thus devoid of any merit, the same are accordingly dismissed. No costs.