
(2012) 10 DEL CK 0112
In the Delhi High Court
Case No : MAC. APP. 410 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Rajesh Kumar and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 10 DEL CK 0112

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

Bench : Single Bench

Advocate : Abhishek Kumar and Mr. Punit Vinay, for the Appellant; Peeyush Sharma, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Company Limited impugns a judgment dated 04.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Case No. 56/2010 whereby a compensation of Rs. 7,09,568/- was awarded in favour of the legal representatives of Ashish Kumar, who died in a motor vehicle accident which occurred in the early hours of 06.11.2009. On the night intervening 05.11.2009 and 06.11.2009 at about 3:30 A.M. the deceased Ashish Kumar along with his father Rajesh Kumar and one Kamal Rajput was returning from DDU hospital on a two wheeler No. DL-4S-BM-4070. The two wheeler was being driven by Kamal Rajput. When they reached the traffic signal at Pankha road and were negotiating a right turn, a truck No. RJ-31G-4278, which was driven by Leelu Singh (Respondent No. 3 herein) in a rash and negligent manner travelled to the side of the two wheeler and rammed into it. On account of the forceful impact, all the three persons fell down. Respondent No. 1 Rajesh Kumar survived with grievous injuries, while the injuries in the case of Ashish Kumar proved fatal.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the offending vehicle by Respondent Leelu Singh.

3. Deceased Ashish Kumar was a bachelor and was a Matriculate. It was claimed that he was earning Rs. 6,000/- per month. In the absence of any evidence with regard to his income, the Claims Tribunal took the minimum wages of a Matriculate; added 50% towards inflation; deducted one-half towards personal and living expenses and applied the multiplier of 14 to compute the loss of dependency. The compensation awarded is tabulated hereunder:-

4. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) Since three persons were travelling on a two wheeler in violation of the provision of the Motor Vehicles Act, 1988 (the Act), there was contributory negligence on the part of the deceased. The compensation is, therefore, liable to be deducted towards contributory negligence.

(ii) An addition of 50% towards inflation was not justified. At the most, there could be addition of 30%.

(iii) The compensation of Rs. 50,000/- awarded towards funeral expenses and Rs. 1,00,000/- towards loss of love and affection is excessive and exorbitant.

NEGLIGENCE

5. Respondent No. 1 Rajesh Kumar who survived the injuries in the accident filed his Affidavit Ex. PW-1/A by evidence testifying about the manner of the accident. He deposed that he along with his son Ashish Kumar (the deceased) and one Kamal Rajput was returning from DDU hospital on a two wheeler No. DL-4S-BM-4070. The two wheeler was being driven by Kamal Rajput. When they reached the traffic point at Pankha road and the two wheeler driver was taking a right turn after giving proper indication, a truck No. RJ-31G-4278, which was being driven by Respondent Leelu Singh in a rash and negligent manner came from Uttam Nagar side. The truck driver took his truck towards the side of the two wheeler and hit it with great force. On account of the forceful impact, they fell down and were dragged upto a considerable distance. In cross-examination on behalf of the owner and driver of the truck it was suggested to PW-1 that the accident was caused as the two wheeler driver became nervous. It was, however, not disputed that the truck had not travelled to the side of the two wheeler and rammed into it.

6. Leelu Singh, driver of the truck also filed his own Affidavit Ex. R1W1/A and stated that the accident was caused on account of the sole negligence on the part of the two wheeler driver. The main thrust of Respondent Leelu Singh was on the fact that there were three persons riding on the two wheeler in violation of the provisions of the M.V. Act. The exact manner of the accident was not disputed.

7. There is no presumption that there would be negligence on the part of two wheeler driver, if three persons are riding on a two wheeler. The negligence has to be established as a fact.

8. In the instant case, as stated earlier, the manner of the accident as deposed by PW-1 Rajesh Kumar was not seriously challenged. Thus, from PW-1's testimony coupled with the registration of a criminal case against the truck driver u/s 279/304-A IPC, an inference of culpable negligence can be drawn against Respondent Leelu Singh.

9. Thus, the finding of negligence, reached by the Claims Tribunal cannot be faulted.

QUANTUM

10. During inquiry before the Claims Tribunal it was claimed that the deceased Ashish Kumar was earning Rs. 6,000/- per month by assisting his father. No reliable evidence was produced with regard to his income. The Claims Tribunal took the minimum wages of a Matriculate to compute the loss of dependency; added 50% in the assumed income on account of inflation.

11. As per Santosh Devi Vs. National Insurance Company Ltd. and Others, ; in the absence of any evidence with regard to future prospects, there could be an addition of only 30% towards inflation in case the victim was a self-employed person. Thus, the loss of dependency comes to Rs. 4,80,589/- (4401/- + 30% x $1/2 \times 12 \times 14$).

12. The Claims Tribunal awarded a sum of Rs. 50,000/- towards funeral expense. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it was laid down that actual expenditure on funeral expenses should be awarded in fatal accident cases. No evidence was led with regard to expenditure on last rites. In the circumstances, it would be appropriate to award only a sum of Rs. 10,000/- under this head.

13. The Claims Tribunal awarded a sum of Rs. 1,00,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

14. The loss to estate awarded by the Claims Tribunal as Rs. 5,000/- is enhanced to Rs. 10,000/-.

15. Thus, the overall compensation comes to Rs. 5,25,589/-.

16. In view of the foregoing discussion, the Appeal is allowed. The compensation stands reduced from Rs. 7,09,568/- to Rs. 5,25,589/-.

17. The excess amount of Rs. 1,83,979/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

18. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.