

(2012) 07 DEL CK 0088
In the Delhi High Court
Case No : MAC. APP. 650 of 2011

New India Assurance Company Ltd.

APPELLANT

Vs

Swati Thakur and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 07 DEL CK 0088

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

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Rajesh Pathak, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Company Limited takes exception to a judgment dated 19.04.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.13,52,660/- was awarded in favour of the Respondents (Swati Thakur, Ram Dhin and Bindu Thakur) for the death of Ravi Thakur who died in a motor vehicle accident which occurred on 22.03.2007. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of truck No.HR-38H-3591 by Respondent Farmanul Huq. The Claims Tribunal held the deceased's income to be Rs.6,000/- per month; added 50% on account of future prospects; considering the number of dependents to be 2 deducted one-third towards personal and living expenses and applied the multiplier of "18" as per the deceased's age.

2. The compensation awarded is extracted hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Loss of Dependency

Rs. 12,96,000/-

2.

Loss to Estate

Rs. 10,000/-

3.

Loss of Love & Affection

Rs. 10,000/-

4.

Funeral Charges

Rs. 10,000/-

5.

Loss of Consortium

Rs. 10,000/-

6.

Medical Expenses

Rs. 16,660/-

Total

Rs. 13,52,660/-

3. There is twin challenge to the impugned judgment. First, that the negligence was not established on the part of Farmanul Huq, the driver of the truck. Rather, it was a case of contributory negligence. Secondly, there was no evidence with regard to the bright future prospects. Thus, the Claims Tribunal erred in making addition of 50% towards the future prospects.

4. While dealing with the issue of negligence, the Claims Tribunal held as under:-

.... As per the certified copy of the criminal court record, charge sheet has been filed against the respondent no.1. The post mortem report is also filed & proved on record and as per the postmortem report, the cause of death is stated to be "road side accident" and, therefore, the court is of the opinion that filing of charge sheet proves rash and negligence on the part of the respondent no.1 and post mortem report of the deceased confirms that the deceased had died because of this accident. Therefore, the issue is decided by holding that the petitioner and respondents no.4 & 5 are the legal heirs of the deceased & the deceased had died in the road accident on 22.3.07 involving the offending

vehicle being driven by the respondent no.1 in rash and negligent manner.

5. The driver of the offending vehicle, that is, the Respondent No.2 did not contest the proceedings. Neither the Appellant (the Insurer), nor the owner or the driver tried to produce any evidence to rebut the filing of the criminal case against the Respondent No.2 for driving truck No. HR-38H-3591 rashly or negligently and in that process causing death of Ravi Thakur.

6. A perusal of the certified copy of the site plan Ex. PW-1/E on which much reliance is placed by the Appellant shows that the deceased was proceeding on his two wheeler on the left side of the road. The offending truck while overtaking the two wheeler swerved towards the left and caused accident.

7. It is well settled that in a Claim Petition u/s 166 of the M.V. Act negligence has to be proved only on touchstone of preponderance of probability and a Claims Tribunal is required to take a holistic view while determining negligence in a Claim Petition. A reference may be made to a judgment of the Supreme Court *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530 where it was held as under:

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

8. In view of above, the Claims Tribunal was justified in drawing an inference of negligence on the part of Respondent No.2.

9. Turning to the second contention, the Claims Tribunal examined PW-2 Anusuya Prasad Chamola, an employee of M/s. Rohan Motors Ltd. He proved the salary certificate Ex. PW-2/A and other documents with regard to Ravi Kumar's employment. Said Ravi Kumar was in regular employment and was paying ESI and provident fund contribution. It is, therefore, established that the deceased was a young person and was in stable employment. The Claims Tribunal was, therefore, justified in making addition of 50% in the deceased's income towards future prospects.

10. There is no error or infirmity in the impugned judgment. The Appeal is devoid of any merit; the same is accordingly dismissed.

11. The compensation awarded to the Claimants shall be released to them in terms of the order passed by the Claims Tribunal.

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