
(2012) 04 DEL CK 0076
In the Delhi High Court
Case No : Mac. App. 708 of 2010

New India Assurance Ltd.

APPELLANT

Vs

Gunjan and Others

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 04 DEL CK 0076

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

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; S.N. Parashar, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Company Limited impugns a judgment dated 12.07.2010 whereby a compensation of Rs. 7,61,704/- was awarded to Respondents No. 1 to 3 for the death of Rajesh Kumar, who died in a motor accident which occurred on 28.01.2005. The following contentions are raised on behalf of the Appellant:-

(i) Negligence on the part of the driver (Anupam Arora) of two wheeler No. DL-7SK-7973 was not proved. In any case, it was a case of contributory negligence and the entire liability could not have been fastened on the Appellant Insurance Company to pay the compensation.

(ii) No evidence was produced by the Respondents No. 1 and 3 to establish that the death was the proximate cause of the injuries suffered in the motor accident which took place on 21.08.2005.

(iii) The Claims Tribunal in the absence of any evidence as to the deceased's income took the minimum wages of an unskilled worker but erred in making addition of 50% on account of inflation which was not permissible in view of the judgment in Rattan Lal Mehta Vs. Rajinder Kapoor and Another, and Dhaneshwari & Another v. Tajeshwar Singh & Others, MAC. APP 997/2011 decided on

19.3.2012.

2. On the issue of negligence, Smt. Gunjan, the deceased's widow entered the witness box as PW-1. She testified that on 28.01.2005 at about 11:30 A.M. she was standing Opposite a Juice Shop at Andrewj Ganj Bus Stop, Ring Road. Her husband Rajesh Kumar was crossing the road for hiring a taxi. In the meanwhile, a motorcycle bearing No. DL-7SK-7973 came from the side of Mool Chand Hospital. It jumped the Red Light Signal and hit her husband while it was being driven at the speed of 80-90 km/hr. Her husband fell down and suffered severe head injury. She deposed that the motorcyclist and the girl, who was the pillion rider also fell down and suffered injuries in the accident. The motorcyclist was caught at the spot. He gave his name as Anupam Arora. She also noted down the number of the motorcycle.

3. The factum of the accident has not been disputed by the driver of the motor cycle. There is no serious challenge to the testimony of PW-1 in cross-examination on the aspect of negligence. No suggestion was given to PW-1 that the motorcyclist did not jump the Red Light Signal or that his speed was not excessive. All the same, Anupam Arora, Respondent No. 4 did not enter the witness box to rebut PW-1's testimony. Negligence was sufficiently proved on the touchstone of preponderance of probability as is required in a Claim Petition filed u/s 166 of the Motor Vehicles Act.

4. The Discharge Summary Ex.PW-1/1 shows that the deceased had suffered head injury in the accident. At the time of his discharge there was "severe head injury left temporal with abscess hydrocephalus". The deceased remained admitted in AIIMS from 28.01.2005 to 08.04.2005. He underwent surgeries on 29.01.2005 and 24.02.2005. In the Postmortem Report Ex. PW-4/1 the cause of death was stated to be "brain abscess". Although, the deceased succumbed to the injuries only on 26.1.2005, since the death was on account of brain abscess, the proximate cause of his death was the injuries suffered in the accident which occurred on 28.01.2005.

5. The contention raised on behalf of the Appellant Insurance Company is without any substance and is therefore, rejected.

6. In Dhaneshwari & Another v. Tajeshwar Singh & Others, MAC. APP 997/2011 decided on 19.3.2012, after noticing the Judgments of this Court in Smt. Anari Devi Vs. Shri Tilak Raj and Another, National Insurance Co. Ltd. Vs. Pooja and Others, Om Kumari & Ors. v. Shish Pal & Ors, 140 (2007) DLT 62; Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008; New India Assurance Co. Ltd. v. Vijay Singh MAC APP. 280/2008 decided on 09.05.2008; Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors. MAC APP.286/2011 decided on 06.01.2012; Smt. Gulabeeya Devi v. Mehboob Ali & Ors. MAC APP.463/2011 decided on 10.01.2012; and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP.189/2011 decided on 30.01.2012; and Division Bench Judgments of this Court in Delhi Transport

Corporation and Another Vs. Lalita, ; and Rattan Lal Mehta Vs. Rajinder Kapoor and Another, , this Court has held that in view of Rattan Lal Mehta (supra) increase in minimum wages cannot be given on account of future inflation.

7. In this case the deceased's salary was claimed to be Rs. 5,000/- per month. In the absence of any evidence, the Claims Tribunal took the minimum wages of an unskilled worker fixed under the Minimum Wages Act and added 50% on account of inflation, which should not have been given as has been held above. Thus, the loss of dependency would come to Rs. 3,89,760/- ($3045/- \times \frac{2}{3} \times 12 \times 16$).

8. No other contention has been raised on behalf of the Appellant and no challenge has been made to the compensation awarded under other heads.

9. On account of change in the loss of dependency, the overall compensation is reduced from Rs. 7,61,704/- to Rs. 5,66,760/-.

10. The excess amount of Rs. 1,94,944/- along with the proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant New India Assurance Company Limited.

11. The statutory deposit of Rs. 25,000/- shall also be refunded to the Appellant Insurance Company. The Appeal is allowed in above terms.