
(2004) 09 DEL CK 0127
In the Delhi High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Deepa Kapoor and Others

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Citation : (2004) 3 ACC 930

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—MAC App. 298/2004 is directed against the order of the -Motor Accident Claims Tribunal, Delhi (for short "the Tribunal") in Petition No. 317/2003, whereby the learned Tribunal vide its order dated 19th April, 2004 has awarded a sum of Rs. 49,80,000/- as compensation to the claimant/respondent herein.

2. The brief facts of the case, as has been noted by the Tribunal are as under:

that 31.10.99, Deepak Kapoor was traveling in Maruti Car bearing registration No. DL-4C-E-4424 which was being driven by respondent No. 1, who is also the owner of the said vehicle and was going from Delhi to Bhamsyu (Ranikhet). The other occupants in the vehicle were Kamal Kishore and Deepak Mohan. At about 7.00 P.M. on Rampur Road the respondent No. 1 lost control on his vehicle and collided into a truck bearing No. UP-04A-Q409, because of which, Deepak Kishore sustained grievous injuries and was immediately rushed to Dr. Sushila Tiwari Memorial Forest Hospital, Haldwani (Nainital) in an unconscious condition, from where, he was referred to Dhanwantri Tower Hospital and was eventually shifted to Indraprastha Apollo Hospital, Delhi for further management on 1.11.99 where, he was admitted to Neuro I.C.U. His condition was very serious and chances of his survival were bleak and if, he would have survived, would have lived like a vegetable. He was shifted to Jeewan Nursing Home, Pusa Road, New Delhi on 7.12.99 where, he finally succumbed to his injuries on 21.12.99.

3. It is submitted that the Accident occurred due to negligence of respondent No. 1 and an FIR was lodged in regard to the Accident. The respondent No. 1 was also the owner of the Maruti Car which was insured with respondent No. 2. It is submitted that a sum of Rs. 6,27,679/- has been spent on the treatment of the deceased. Moreover, the deceased was a Chartered Accountant, doing his profession under the name and style of Deepak Kapoor & Co. and his career was progressing and annual turnover was consistently increasing @ 20% per year. The income of the deceased was approximately Rs. 5 lakhs per annum and is apparent from his income tax returns. The deceased was the sole bread winner and the petitioners were financially dependent upon him. The deceased was contributing 75% of his income towards the maintenance of the petitioners. It is submitted that the deceased was expected to live for another 30 years and the petitioners are entitled to a sum of Rs. 75 lakhs on Account of loss of income. They are also entitled to a sum of Rs. 25 lakhs on Account of pain and suffering. The petitioners have, thus claimed a sum of Rs. 1,06,27,679/- along with interest 24% P.A. As compensation, by way of present petition.

4. The respondent No. 1 was duly served with the petition but, he failed to appear and was proceeded ex parte.

5. The respondent No. 2, in his written statement took the preliminary objection that the answering respondent is not liable to pay any compensation as no additional premium was paid by the insured for covering the risk of the deceased passenger in the insurance policy; that the petition is liable to be dismissed for misguide of necessary parties; that no cause of action lies against the respondents as the Accident did not take place on Account of rash and negligent driving of the vehicle by its driver; that it is not liable to pay the compensation if, it is found that the driver was not holding valid driving license or was otherwise, disqualified from holding an effective driving license or of, it is found that the respondent No. 1 had transferred or disposed of the vehicle or was not registered owner of the vehicle at the time of the Accident. On merits, all the averments contained in the petition are denied though, it is admitted that the vehicle was insured with the answering respondent vide policy No. 271200/1999/2944 for the period 15.1.99 to 14.1.2000.

6. The issues were framed on 7.10.2002 on the basis of pleadings of the parties which are as under:

1. Whether Deepak Kapoor died due to rash and negligent driving of car No. DL-4CE-4424 driven by respondent No. 1 Sanjay Kahthuria?

2. Whether the petitioners are the only L.Rs of the deceased entitled to file this claim petition?

3. Whether respondent No. 2 is not liable to pay the amount of compensation in view of the objections raised in written statement?

4. To what amount of compensation, if any, the petitioners are entitled to receive

and from whom?"

7. It is contended by Counsel for the appellant that the Tribunal while adjudicating on issue No. 4 has taken into consideration the income tax returns filed on behalf of the deceased by his wife for the years 1997-98, 1998-99 and 1999-2000 and that those figures are inflated. He also submits that at the highest the deceased could be said to have earned about a lakh of rupees per annum in view of the return filed for the year 1999 where projected figure is Rs. 47,000/- approximately for seven months.

8. Heard Counsel for the parties and have gone through the judgment under challenge. It appears to me that the Tribunal has taken note of the income tax returns filed for three years and has come to the conclusion that annual income of the deceased should be taken as Rs. 2,52,991.87, which is the income as per the income tax return filed for the year 1998-1999. I have considered the judgment under challenge and have also gone through the judgment of the Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . I am of the view that deceased's future earnings cannot be underscored and that the figures arrived at by the Tribunal was not excessive, they are based on the material on record. In this view of the matter, I find no grounds to interfere. MAC App. 298/ 2004 is Accordingly dismissed. CM Appl. 8835/2004 also stands dismissed.

9. However, it is submitted by Counsel for the respondents that the Tribunal has directed 90% of the compensation along with proportionate interest as awarded to respondent No. 1 herein be kept in FDR for a period of 18 years. This he submits is causing hardship to the claimant inasmuch as over six lakhs has been spent towards medical expenses itself, which amount if not reimbursed immediately to the claimant respondent No. 1 would cause hardship and embarrassment. Having considered the statement of Counsel for the respondent/claimant, I am of the view that out of the amount awarded to respondent No. 1 by the Tribunal, a sum of Rs. 10 lakhs may be released to the claimant/respondent No. 1 herein forthwith. The remaining amount together with interest shall be kept in FDR for a period of 18 years. The insurance company is directed to deposit the balance of the amount awarded within a period of four weeks from today.