
(2012) 09 DEL CK 0531

In the Delhi High Court

Case No : MAC. App. 549 of 2004 and MAC. App. 550 and 551 of 2004

Prabha Wadhwan and Others

APPELLANT

Vs

UOI and Others
 Shivain Dayal Mathur and Others Vs
Jagdish Prasad Meena and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 168

Citation : (2012) 09 DEL CK 0531

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

Bench : Single Bench

Advocate : Rajeshwar K. Gupta, for the Appellant; Munish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These three Appeals (MAC. APP. 549/2004, MAC. APP. 550/2004 and MAC. APP. 551/2004) arise out of a common judgment dated 12.05.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in Suit No. 342/2003(Old No. 24/1988), Suit No. 340/2003(Old No. 236/1987) and Suit No. 341/2003(Old No. 235/1987) a compensation of Rs.1,24,500/-, Rs.32,586/- and Rs.2,34,158/- respectively was awarded for the death of Deepak Wadhwan, aged 15 years, for injuries on the person of Shivain Dayal Mathur and, for the death of O.D. Mathur. On 29.08.1987 at about 8:45 pm, deceased O.D. Mathur and Deepak Wadhwan, injured Shivain Dayal Mathur and other persons were proceeding in an Ambassador Car No. DHA-8681 from Naraina to Todapur Road. A postal van No. DEL-6853 driven by the First Respondent (Jagdish Prashad Meena) in a rash and negligent manner came from the opposite direction and hit against the Ambassador car. As a result of the aforesaid impact, O.D. Mathur and Deepak Wadhwan suffered fatal injuries, whereas Shivain Dayal Mathur suffered grievous injuries.

2. On appreciation of evidence, the Claims Tribunal found that the accident was

caused on account of rash and negligent driving of van No. DEL-6853. The deceased Deepak Wadhwan(MAC. APP. 549/2004) was a 15 year old boy and a student of 9th Standard. The Claims Tribunal took minimum wages of non-matriculate, added 50% towards future prospects to compute the loss of dependency. After adding a sum of Rs. 21,000/- towards non-pecuniary damages, an overall compensation of Rs. 1,24,500/-was awarded in favour of the Appellants, who are the mother and two siblings of the deceased.

3. The Appellant Shivain Dayal Mathur(MAC. APP. 550/2004), suffered fracture of corollary bone and wrist, loss of two teeth and injury in the abdomen (liver). In respect of the injuries suffered by the Appellant, the Claims Tribunal awarded a compensation of Rs. 12,586/- towards the amount spent on medical treatment and a lump sum compensation of Rs. 20,000/- towards pain and suffering, conveyance and special diet, etc. etc.

4. Similarly, for the death of deceased O.D. Mathur his income as per Income Tax Return was accepted as Rs. 19,378/-. The Claims Tribunal added 50% towards future prospects and applied a multiplier of 11 as per the deceased's age to compute the loss of dependency as Rs. 2,13,158/-. A sum of Rs. 21,000/- was awarded towards non-pecuniary damages to compute an overall compensation of Rs. 2,34,158/-.

5. In the absence of any Appeal by the driver (the First Respondent) and the owner of the Postal Department van (Respondents No. 2 and 3), the finding on negligence has attained finality.

6. The learned counsel for the Appellant raises the following grounds:

(i) Future prospects of the deceased persons were not considered in the death cases and thus the loss of dependency is on the lower side.

(ii) In the injury case, the Claims Tribunal awarded a compensation of Rs. 20,000/- towards pain and suffering, special diet, conveyance and loss of amenities which was very low and meagre.

(iii) The Claims Tribunal awarded interest only from the year 2000 and that too @ 4% per annum although the Claim Petition was filed in the year 1988.

7. Section 168 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Supreme Court held as under:-

5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales". All this means that the sum awarded must be fair and reasonable by accepted legal standards.

8. I shall take all the three Appeals one by one.

MAC. APP. 549/2004 (Suit No. 342/2003) (Old No. 24/1988)

9. As stated earlier, this Appeal relates to the death of a 15 year old boy, Master Deepak Wadhwan. In case of death of minor children, the trend of higher Courts is to take a notional income of Rs. 15,000/-(as per the Second Schedule to the Act) to award of loss of dependency. The Second Schedule was added by virtue of the addition of Section 163A in the Motor Vehicles Act, 1988 w.e.f. 14.11.1994. The annual income of Rs. 15,000/- is much less than the minimum wages of non-matriculate. In the instant case, the accident took place in the year 1987. The Claims Tribunal instead of taking the notional income took the actual wages of a non-matriculate. The Claims Tribunal also added 50% of the income towards future prospects. In the case of R.K. Malik and Another Vs. Kiran Pal and Others, wherein several children died on account of falling of the bus in Yamuna on account of the rash and negligent driving by its driver, a compensation of Rs. 2,25,000/- was awarded towards loss of dependency and Rs. 75,000/- towards future prospects was awarded. The accident in the said case occurred in 1997. In National Insurance Co. Ltd. Vs. Farzana and Others, , the accident occurred in the year 2000 and this Court increased the compensation to Rs. 3,75,000/-.

10. As stated hereinabove, the compensation in R.K. Malik and Farzana, was granted on notional income which at the relevant time was less than the minimum wages. The Appellant was granted compensation on the basis of minimum wages of a non-matriculate which is higher than the notional income and an addition to the extent of 50% was made towards future prospects. The overall compensation awarded cannot be said to be on the lower side.

11. Coming to the grant of interest, it may be mentioned that there was gross negligence in pursuing the Claim Petition by the Appellants. Initially, the Appellants were not taking steps for service of the Respondents. Last opportunity was granted to the Appellant to produce the evidence on 07.07.1992. No evidence was produced on that date. On the next date, none appeared on behalf of the Appellants and the Claim Petition was dismissed for want of prosecution. An Application for restoration was moved on 07.12.1992. Again, the Appellants were negligent in not taking proper steps. The Claim Petition was dismissed by an order dated 07.10.1999 for want of evidence. The Claims Tribunal observed that the evidence was not produced despite forty one opportunities granted to the Appellants. An Application for setting aside the order dated 07.10.1999 was also dismissed by an order dated 11.01.2000. The Appellants preferred CM(M) 258/2000 whereby the Appellants were permitted one opportunity to produce their evidence. Even thereafter, the Appellants took several adjournments to produce their evidence. The Claims Tribunal was, therefore, justified in granting interest w.e.f. 15.05.2000, that is, the date whereby the Appellants were permitted to one opportunity to produce their evidence.

12. The Claims Tribunal awarded interest @ 4% per annum. The inflation during

the period of 2000 to 2004 was very low. Consequently, rate of interest on fixed deposit were also low. In the circumstances, no interference in the award of interest @ 4% per annum is required.

13. The Appeal is devoid of merit; it is accordingly dismissed.

14. Pending Applications stands disposed of.

MAC. APP. 550/2004 (Suit No. 340/2003(Old No. 236/1987)

15. This case is related to the injuries suffered by the Appellant Shivain Dayal Mathur.

16. Immediately after the accident, the Appellant was removed to Sir Ganga Ram Hospital. The Appellant claimed that he spent a sum of Rs. 50-60,000/- on his treatment. He was a student of 12th Standard. He remained admitted in Ganga Ram Hospital from 29.08.1987 to 08.09.1987. Admittedly, he did not suffer any permanent disability. He was granted a compensation of Rs. 12,586/- on the basis of the actual bills proved on record by him. Keeping in view that this accident took place in the year 1987, when any income beyond Rs. 18,000/- per annum was taxable, a compensation of Rs. 20,000/- towards pain and suffering, special diet and conveyance seems to be just and reasonable.

17. The Appeal is devoid of merit; it is accordingly dismissed.

18. Pending Applications stands disposed of.

MAC. APP. 551/2004(Suit No. 341/2003(Old No. 235/1987)

19. This Appeal relates to the death of O.D. Mathur. During inquiry before the Claims Tribunal, it was claimed that he was running a factory at Village Payala at Ballabhgarh, Haryana in the name and style of M/s. K.J.R. Ceramics. He was an Income Tax Assessee and had returned Rs. 19,378/- in the Financial Year prior to his death in the accident. The Claims Tribunal accepted his income as claimed, added 50% towards future prospects and applied a multiplier of 11. If compensation is computed as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Appellant would not entitle to any addition towards future prospects and the loss of dependency would come down to Rs. 1,70,526/- against an award of Rs. 2,34,158/-. The overall compensation of Rs. 2,34,158/- cannot be said to be on the lower side. Rather, the same is just and reasonable and does not call for any interference.

20. The Appeal is devoid of merit; it is accordingly dismissed. Pending Applications stands disposed of.