
(2015) 07 DEL CK 0202

In the Delhi High Court

Case No : Regular First Appeal No. 308 of 2011

Rekha and Others

APPELLANT

Vs

BSES Rajdhani Power Ltd.

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (2015) 3 ACC 929

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Aruna Mehta, for the Appellant; Anjali Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J—The appellants have challenged judgement and decree for Rs.4,16,000/- along with interest @ 7.5% passed by the learned Trial Court. The appellants are seeking enhancement of the compensation amount to Rs. 10 Lakh.

2. On 15th June, 2007 at about 02.30 P.M., Raju was crossing Lottery Godown Street. The said area was water logged due to the rains. In order to save himself from the collected water, Raju held the electric pole No. B-286 and he was electrocuted due to the leakage of electricity in the said pole.

3. The deceased Raju was survived by his widow and parents who filed a suit for recovery before the Trial Court. The deceased was aged 35 years at the time of the accident and was carrying on the business of manufacture of card board boxes. The appellants claimed that the deceased was earning Rs.6,000/- per month. The learned Trial Court took the minimum wages of Rs.3,500/- per month deducted 50% towards personal expenses and applied the multiplier of 16 to compute the loss of dependency of Rs.3,36,000/-. The learned Trial Court awarded Rs.75,000/- towards loss of consortium, loss of love and affection, loss of estate and Rs.5,000/- towards funeral expenses. The total compensation

awarded is Rs.4,16,000/- along with interest @7.5% from the date of decree.

4. Learned counsel for the appellants has urged following grounds at the time of hearing of the appeal:-

(i) The income of the deceased be taken as Rs.6,000/- per month.

(ii) The future prospects be added to the income of the deceased.

(iii) The interest be awarded @ 9% from the date of the filing of the suit.

5. The appellants are entitled to just compensation under Sections 1A and 2 of the Fatal Accidents Act, 1885 which has to be computed according to the multiplier method. Reference may be made to Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, AIR 1962 SC 1 : (1962) 1 SCR 929 , Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and Another, (1968) ACJ 183 : AIR 1969 SC 128 : (1969) 1 SCR 206 , Ishwar Devi Malik and Others Vs. Union of India and Others, (1968) ACJ 141 : AIR 1969 Delhi 183 : (1968) ILR Delhi 59 Supp : (1968) ILR Delhi 59 , Lachhman Singh and Others Vs. Gurmit Kaur and Others, AIR 1979 P&H 50 : (1979) 1 ILR (P&H) 186 , Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others, AIR 1956 Cal 555 : (1956) 1 CALLT 414 . The multiplier method has been accepted as legally sound method for determining compensation in death cases by the Supreme Court in Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001) 91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001) AIRSCW 3086 : (2001) 6 Supreme 151 ; Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, AIR 2012 SC 100 : (2011) 4 CPJ 74 : (2011) 12 JT 192 : (2012) 3 RCR(Civil) 203 : (2011) 2 SCALE 194 : (2012) 1 TAC 31 and Jaipur Golden Gas Victims Association Vs. Union of India (UOI) and Others, (2011) ACJ 1879 : (2009) 164 DLT 346 ; Nagrik Sangarsh Samiti and Others Vs. Union of India (UOI) and Others, (2012) ACJ 1548 : (2010) 4 ILR Delhi 293 ; Ram Kishore Vs. Municipal Corporation of Delhi, (2007) 97 DRJ 445 ; Ashok Sharma and Others Vs. Union of India (UOI) and Others, (2009) ACJ 1063 : (2008) 1 ILR Delhi 96 .

6. In Lata Wadhwa v. State of Bihar (supra), a fire broke out in a factory in which sixty people died and one hundred and thirteen got injured. The Supreme Court awarded compensation to the victims on the basis of the multiplier method.

7. In Jaipur Golden Gas Victims Association v. Union of India (supra), the Division Bench of this Court awarded compensation to the victims of Jaipur Golden Fire Tragedy by applying the multiplier method.

8. In Ashok Sharma v. Union of India (supra), six children lost their lives by drowning during an annual training camp of NCC on account of negligence on the part of respondents. The compensation was awarded by applying the multiplier method.

9. The compensation in death cases according to the multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3rd deduction is made; if the deceased has left behind four to six family members, deduction of 1/4th of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5th of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency to the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency of the dependants of the deceased is multiplied by the multiplier according to the age of the deceased or claimant whichever is higher. A table of multiplier is given in Schedule-II of the Motor Vehicle Act, 1988 but there was some error in the said table which has been corrected by the Supreme Court in the judgment of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 .

10. The principles relating to the computation of compensation by multiplier method are as under:-

10.1 Multiplier

10.2 Deduction for Personal and Living Expenses

10.2.1 Deceased - unmarried

10.2.2 Deceased - married

10.3 Future Prospects

11. In Assn. of Victims of Uphaar Tragedy and Others Vs. Union of India (UOI) and Others, (2003) 2 ACC 114 : (2003) ACJ 1631 : (2003) 3 AD 321 : (2003) 104 DLT 234 : (2003) 68 DRJ 128 : (2003) RLR 333 , the Division Bench of this Court applied the multiplier method and the Second Schedule of the Motor Vehicles Act, 1988 to compute the compensation payable to the victims of the Uphaar Tragedy. The Division Bench held that the victims of the fire incident belonged to reasonably well-placed families and presumed that the average income of the victims above age of 20 years to be not less than Rs.15,000/- per month, 1/3rd was deducted towards the personal expenses and the multiplier of 15 was applied to compute the compensation as Rs.18,00,000/-. With respect to the children, the Division Bench awarded compensation of Rs.15,00,000/-. The

Division Bench also awarded interest @ 9% per annum. The Municipal Corporation of Delhi challenged the aforesaid judgment of the Division Bench before the Supreme Court. The Supreme (i) 2 to 3 dependent family members. : 1/3rd deduction towards personal expenses. (ii) 4 to 6 dependent family members. : 1/4th deduction towards personal expenses. (iii) More than 6 family members : 1/5th deduction towards personal expenses. (iv) Subject to the evidence to the contrary. : Father, brother and sisters will not be considered as dependents. Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (supra) reduced the compensation from Rs.18,00,000/- to Rs.10,00,000/- in respect of victims aged more than 20 years and from Rs.15,00,000/- to Rs.7,50,000/- lakhs in respect of the victims aged less than 20 years. The findings of the Supreme Court are reproduced hereunder :-

"38. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, (1993) ACJ 787 : AIR 1993 SC 1960 : (1993) 76 CLT 98 : (1993) CriLJ 2899 : (1993) 2 JT 503 : (1993) 2 SCALE 309 : (1993) 2 SCC 746 : (1993) 2 SCR 581 in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the

LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487). If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore, just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of Sarla Verma (supra). The annual loss of dependency multiplied by the multiplier will give the compensation."

"Conclusions

46. In view of the foregoing, we dispose of the appeals as follows:

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(v) CA No. 6748 of 2004 is allowed in part and the judgment of the High Court is modified as under:

(a) The compensation awarded by the High Court in the case of death is reduced from Rs. 18 lacs to Rs. 10 lacs (in the case of those aged more than 20 years) and Rs. 15 lacs to Rs. 7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs. One lakh awarded by the High Court in the case of

each of the 103 injured persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

(d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application is filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to them."

(Emphasis Supplied)

12. In *MCD v. Association of Victims of Uphaar Tragedy* (supra), the Supreme Court has awarded Rs. 10 Lakhs to the victims aged more than 20 years. It is relevant to note that the Uphaar Tragedy took place on the 13th of June, 1997 and the minimum wages at the relevant time ranged from Rs. 1,677/- for unskilled workers to Rs. 2437/- for graduates. It is thus clear that although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply minimum wages.

13. Following the aforesaid judgement considering the business of manufacture of card board boxes, the income of the deceased is presumed to be Rs. 4500/- per month. 50% is added towards the future prospects and 1/3 is deducted towards his personal expenses. Applying the multiplier of 16 at the age of 35, the loss of dependency of the deceased is computed at Rs. 8,64,000/-. Rs.1,36,000/- is added towards loss of consortium, loss of love and affection, loss of estate and funeral expenses. The total compensation is computed to be Rs. 10,00,000/-.

14. The Trial Court has awarded interest @6% per annum which is on a lower side. The Supreme Court consistently awarded 9% interest in *Amresh Kumar v. Niranjana Lal Jagdish Parshad Jain* (2015) 4 SCC 433, *Mohinder Kaur v. Hira Nand Sindhi* (2015) 4 SCC 434 and *Jitendra Khimshankar Trivedi and Others Vs. Kasam Daud Kumbhar and Others* (2015) 2 ACC 30 : (2015) ACJ 708 : (2015) 3 AD 97 : (2015) 1 RCR(Civil) 828 : (2015) 2 SCALE 172 : (2015) 4 SCC 237 : (2015) 2 SCJ 306 . Following the aforesaid judgements, the rate of interest is enhanced from 6% per annum to 9% per annum from the date of filing of the suit.

15. The appeal is allowed and the decretal amount is enhanced from Rs. 4,16,000/- to Rs.10,00,000/- along with interest @ 9% from the date of filing of the suit till realization.

16. Enhanced decretal amount be deposited by the respondent with UCO Bank Delhi High Court Branch by drawing a cheque in the name of UCO Bank A/c Rekha within 30 days.
17. The order for disbursement of the amount shall be passed after hearing the appellants
18. The appellants shall remain present in Court on next date of hearing.
19. Copy of this judgment be given dasti to counsel for both the parties.