
(2014) 12 DEL CK 0038

In the Delhi High Court

Case No : MAC. App. 1029/2011 and CM No. 20925/2011

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Rashmi

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii), 6

Citation : (2014) 12 DEL CK 0038

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pankaj Seth, Advocate for the Appellant; J.S. Kanwar and Amit Dhalla, Advocate for the Respondent

Judgement

Jayant Nath, J.—The present appeal is filed to impugn the award dated 06.08.2011. The brief facts are that Mr. Aashish @ Rinku on 02.07.2010 was going on his motorcycle. He was hit by a truck driven by Mr. Salim Khan, respondent No. 6.

2. Based on the evidence on record the Tribunal concluded that the accident took place due to rash and negligent driving of respondent No. 6. On compensation, the Tribunal awarded a total compensation of Rs.15,19,816/-, the details of which are as follows:-

3. Learned counsel appearing for the appellant submits that he has various grounds to impugn the award. He firstly submits that the Tribunal has wrongly concluded about the negligence of the offending vehicle which was insured by the appellant company. He submits that the Tribunal has only on the basis of the criminal records concluded that the accident took place due to the rash and negligent driving of the truck without giving an opportunity to the appellant/insurance company to cross-examine the Investigating Officer, who was responsible for preparation of the criminal case record. Hence he submits that the finding of negligence is improper. He further submits that the Tribunal has wrongly assessed the loss of dependency. Having assessed the income of the

deceased the Tribunal has erred in deducting 1/4th towards personal expenses. He relies upon judgment of the Hon"ble Supreme Court in the case titled Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, to contend that the father of the deceased cannot be considered as a dependent and therefore 1/3rd should have been deducted towards personal expenses. He further submits that the Tribunal has erred in adding 50% towards future prospects, after assessing the income of the deceased based on minimum wages.

4. He further submits that the Tribunal has wrongly fastened liability on the appellant. He states that the driver Salim Khan/Respondent No. 6 was having two driving license which is forbidden under section 6 of the M.V. Act. Before the police the appellant produced a driving license from Mathura which on verification by the police was found fake. Before the Court he submitted another driving license from Fatehnagar, Farukhabad, U.P. He submits that at the time of the accident the driver respondent No. 6 was driving the offending vehicle without a valid driving license and the appellant/insurance company has been wrongly fastened with liability.

5. A perusal of the Award shows that the Tribunal assessed the income of the deceased based on the minimum wages for a matriculate i.e. Rs.6,448/-. The Tribunal enhanced the same by 50% on account of future prospects keeping into account the fact that the deceased was about 25 years old. The Tribunal noted that the family consisted of wife, parents and one son and deducted 1/4th on account of personal expenses. Applying a multiplier of 17, loss of dependency was assessed at Rs.14,79,816/-.

6. As far as the issue of negligence is concerned, a perusal of the award shows that the Tribunal has relied upon the evidence by way of affidavit of PW3 Parmod. PW-3 stated that he is the uncle of the deceased and was sitting on the pillion seat and was an eye-witness to the accident. In his affidavit by way of evidence states that the offending truck came from behind in a rash and negligent manner and hit the motorcycle. There is nothing in the cross-examination which shakes his averments.

7. The driver/respondent No. 6 also entered into the witness-box (R2W1). In his affidavit by way of evidence he stated that the motorcycle came from behind from his left hand side and the driver of the motorcycle lost control over his bike due to which he fell down on the road and died. He states that the truck did not even touch the bike of the deceased. He denies in his cross-examination that he hit the motorcycle from behind with the front portion of the truck. He also denies that the accident took place due to his rash and negligent driving. He admits that a criminal case is pending against him in the criminal court for rash and negligent driving.

8. A perusal of the mechanical inspection report of the truck shows that there was a scratch on the front bumper indicating that the collision had taken place from the front side.

9. The site plan also shows that after the accident the motorcycle and truck were found at the place of the accident. The driver of the truck was arrested on the spot.

10. In view of above, the evidence of the driver R2W1 cannot be believed. There is enough evidence on record to hold that respondent No. 6 Salim Khan had hit from the front portion of the truck the motorcycle of the deceased from behind. That explains the marks on the front bumper of the truck, as stated in the Mechanical Inspection Report. That explains why the truck was at the accident site, as shown in the site plan.

11. Hence, there is enough evidence on record to justify the conclusion of the Tribunal that the accident took place due to the rash and negligent driving of the truck.

12. Coming to the issue of future prospects. I can take judicial note of the fact that minimum wages for a matriculate in 2002 were Rs.3115.40/- P.M. and in 2012 were Rs.8528/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

13. In case of Rajesh and Others Vs. Rajbir Singh and Others, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

14. In the case of Smt. Savita Vs. Bindar Singh and Others, , the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of V. Mekala Vs. M. Malathi and Another, , the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

15. Further, this court in the case of ICICI Lombard General Insurance Company vs. Angrej Singh & Ors. in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (supra), Reshma Kumari & Ors. vs. Madan Mohan & Anr.(supra), Rajesh and Others Vs. Rajbir Singh and Others, and other judgments and concluded that future prospects should be given to persons who are self-employed or on fixed wages.

16. I may further note that this court in MAC APP.761/2012 Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors. vide judgment dated 02.04.2014 had in a case where the deceased was 24 years old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of Rajesh & Ors. vs. Rajbir Singh & Ors.(supra). Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No. 5612/2014 was dismissed by the Supreme Court on

10.10.2014.

17. In the light of the above, the addition of future prospects to the assessed income by the Tribunal is in order.

18. On deduction towards personal expenses, it is the contention of the appellant that only 1/3rd has to be deducted for loss of dependency as the father cannot be said to be dependant. The father has entered into the witness box as PW2. He states in his affidavit that all the family members were dependent on the deceased and he has no sufficient income. In his cross-examination he admitted that he is an agriculturist and has three sons and one daughter and deceased was the only married son and deceased was giving Rs.8000/- per month to him.

19. In the light of the above fact that the father of the deceased is a earning member of the family being an agriculturist, he cannot be considered to be dependent on deceased. Hence 1/3rd is to be deducted towards personal expenses.

20. Therefore, the award is accordingly modified. The multiplier of 17 was applied by the Tribunal following the judgment of the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The minimum wages for a matriculate which is Rs.6,448/- was taken by the Tribunal. Hence, total loss of dependency would now be Rs.13,15,399/- $[(Rs.6448 + 50\% - 1/3) \times 12 \times 17]$. Total compensation would now payable is as follows:-

21. As far as driving license is concerned, the Tribunal has held that there is no breach of terms and conditions of the insurance policy nor there was any violation of Section 149(2)(a)(ii) of the Act, hence the appellant was responsible to pay the compensation.

22. Perusal of the evidence of the owner of the offending truck Ram Gopal R1W1 shows that he proved copy of the RC as Ex. RW1/1, permit and fitness Ex. RW1/2, copy of driving license of driver Salim Khan Ex. RW1/3, verification report of driving license from Farukabad Licensing Authority U.P. Ex. RW1/4. In his cross examination he states that Salim was appointed by him from last 7 years. He also confirmed that he did not verify the driving license of Salim from the office of RTO as he did not find anything suspicious. He further states that he has no knowledge that driving license of Salim seized by IO was a fake driving license. He deposed that it was not within his knowledge that the driving license of Salim was fake and despite that he handed over the truck in question to him for driving.

23. Similarly, Salim Khan R2W1 his cross examination has denied that he has handed over the driving license issued from District Mathura to the police and the same was a fake driving license. He voluntarily submits that the license of Farukhabad Authority was issued to him as he was driving the vehicle in that District only.

24. The Supreme Court in the judgment of United India Insurance Company Ltd. vs. Lehu and Ors. made the following observations:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO"s, which are spread all over the country, whether the driving license shown to them is valid or not."

25. The evidence on record clearly shows that the owner of the offending vehicle has taken adequate precautions to verify the driving skills of the driver before engaging him. He saw his driving license had knowledge of the driving skills of the driver. He could not obviously know that the driver was possessing two driving license, one of whom was fake. There is no merit in the contention of the appellant regarding the driver not having a valid driving license.

26. Accordingly, the appeal is disposed of. Interim orders including order dated 21.11.2011 stand vacated.

27. The amount lying deposited in the Court with proportionate interest be released as per this order to the claimants proportionately as per order of the Tribunal. Balance amount with proportionate interest be refunded as per directions of this Court to the appellant. Statutory amount deposited by the appellant at the time of filing of the appeal be refunded to the appellant.