

(2015) 01 DEL CK 0295

In the Delhi High Court

Case No : Mac. App. No. 229 of 2013

Reliance General Insurance Company Ltd.

APPELLANT

Vs

Barkha Sharma and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Motor Vehicles Act, 1988 — Section 166

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2015) 1 ACC 522 : (2016) ACJ 236

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

Bench : Single Bench

Advocate : A.K. Soni, for the Appellant; Deepa Rai, Advocates for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Reliance General Insurance Company Limited impugns the judgment dated 11.12.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) and seeks reduction of the compensation of Rs. 50,80,000 which was awarded to Respondent Nos. 1 to 6 for the death of Gulshan Sharma, who succumbed to the fatal injuries in a motor vehicular accident which occurred on 10.11.2010 at about 10.50 p.m. at M.B. Road, Near K.S.S. Ring Road, New Delhi. There is twin challenge to the impugned judgment. First, that the negligence on the part of the driver of the offending vehicle was not established and second, the compensation awarded is exorbitant and excessive in as much as although the deceased Gulshan Sharma was getting a salary of Rs. 2,99,620, at the same time, a sum of Rs. 2,320 per month was being received by him towards transport allowance which was incidental to his employment which was to be used to commuting to and fro home to the place of the employment, yet the Claims Tribunal included the same in his income while computing the loss of dependency.

2. On the other hand, learned Counsel for the Respondents supports the judgment passed by the Claims Tribunal and urges that the compensation awarded towards loss of love and affection and loss of consortium was on the lower side.

Negligence

3. The Claims Tribunal appraised the testimony of PW-9 Ram Kumar, an eye-witness to the incident, registration of the criminal case and the report under Section 173, Cr.P.C. and opined that the accident was caused because of the rash and negligent driving of the truck bearing registration No. DL-1GB-6524 by its driver. The relevant discussion from para 6 of the impugned judgment is extracted hereunder:

"6. Since the present petition is under Section 166 of M.V. Act, it was the bounden duty of the petitioners to prove that the respondent No. 1 was rash and negligent in driving the vehicle at the time of accident. To prove this issue, the learned Counsel for the petitioners has relied upon the statement of PW-9, Shri Ram Kumar, who is an eye-witness to the accident and has deposed that on 10.11.2010, he was riding his motorcycle and when he had reached in front of Tuglakabad Fort, one motorcycle bearing registration No. DL-3S-AW-3307 was already going ahead to his motorcycle and at about 10.50 p.m. the offending vehicle i.e. Dumper Truck bearing registration No. DL-1GB-6524 came from the side of Badarpur and it was being driven at a very high speed and in a rash and negligent manner and the said truck hit the motorcycle bearing registration No. DL-3SAW-3307 resultantly the motorcyclist got crushed under the wheels of the said vehicle. The said witness further averred that he later on come to know the name of the deceased to be Gulshan Sharma and that the police had also recorded his statement. On being cross-examined by the Counsel for R-1 and R-2 on 13.9.2012, PW9, Sh. Ram Kumar stated that on the date of accident he was coming from Noida and was going to his residence at Ghitorni and the deceased motorcyclist was going ahead of his motorcycle. He has further stated that police officials had met him at Trauma Centre, AIIMS and they had also taken him to the place of accident and recorded his statement on the next day of accident. On being cross-examined by the Counsel for R-3/Insurance Company this witness has stated that the motorcyclist was hit from behind and the motorcycle of the deceased bearing registration No. DL-3SBL-3307 was crushed under the front wheel of the dumper. He further stated that the deceased was not related to him. ASI Ashok Kumar has also deposed that he had investigated the FIR No. 283/10, PS Pul Prahladpur and the Detailed Accident Report, Ex. PW7/A had been filed by him. The IO has also stated that Sh. Ram Kumar had witnessed the accident and his statement had been recorded by him and site plan, Ex. PW7/R-1 had been prepared at the instance of eye-witness, Ram Kumar. The FIR No. 283/10, Ex. PW4/A has also been proved by Constable Pawan Kumar who had produced the original FIR register No. 6 for the year 2010. The respondent No. 1, Sh. Dhruv Prakash Sharma has got himself examined as R1W1 and has averred that no

accident had taken place due to his negligence. However, R1W1, Sh. Dhruv Prakash has admitted during his cross-examination on 30.11.2012 that he is facing trial in respect of FIR No. 283/10, PS Pul Prahladpur and that he was arrested in the said FIR and was released on bail by the police. R1 W1 has further admitted that he has not filed any complaint regarding his false implication in this case. R1W1 in his entire deposition has not explained about the manner in which the accident had taken place and it is strange that although he had been arrested in FIR No. 283/10, PS Pul Prahladpur but he does not chose to file any complaint before any authority. Accordingly, I do not find the testimony of the R1W1, Sh. Dhruv Prakash Sharma worthy of any credence. On the other hand, the statement of PW-9, Shri Ram Kumar stands corroborated by the Detailed Accident Report as well as the Final Report under Section 173, Cr.P.C. filed by the police in respect of this accident (FIR No. 283/10, PS Pul Prahladpur) against the respondent No. 1/driver of the offending vehicle for his trial for offences under Section 279/304A, IPC. The copies of FIR, Ex. PW4/A; site plan, Ex. PW-7/R-I; seizure memo of the driving licence of R-1/driver; seizure memo of the offending vehicle; arrest memo of the R-1/driver and mechanical inspection report of the offending vehicle have also been filed on record...." 4. From the discussion of the testimony of PW-9 and the driver R1W1, it is evident that the accident was caused because of the rash and negligent driving of the offending truck. It may also be noted that for the purpose of claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (the M.V. Act) negligence has to be proved on the touchstone of preponderance of probabilities only. In my view, negligence was sufficiently proved. The finding on negligence, therefore, cannot be faulted.

Compensation

5. Deceased Gulshan Sharma was working as a Data Entry Operator in National Crime Records Bureau and was getting a salary of Rs. 2,99,620 per annum as per Form 16 duly proved on record as Ex. PW-3/D. He was in settled government employment. The age of the deceased was only 36 years. Hence, the Claims Tribunal rightly granted future prospects of 50% and applied the multiplier of 15. At the same time, sum of Rs. 2320 was being used by the deceased Gulshan Sharma for commuting to and fro the place of his work. The same ought to have been deducted from his income while computing loss of dependency.

6. Form 16 further shows that income of Rs. 33,420 was exempted from income tax. The tax was thus, liable to be paid only on income of Rs. 2,66,200.

7. The loss of dependency hence, comes to Rs. 44,07,075 $[2,99,620 - 27840 (TA) - 10,620 (income\ tax) + 50\% \times \frac{3}{4} \times 15]$.

8. The Claims Tribunal awarded a sum of Rs. 10,000 each towards funeral expenses, loss to estate and loss of consortium and Rs. 25,000 towards loss of love and affection. The same needs to be enhanced to Rs. 25,000, Rs. 10,000, Rs. 1,00,000 and Rs. 1,00,000 respectively in view of the judgment in Rajesh

and Others Vs. Rajbir Singh and Others, .

9. The revised compensation is tabulated as under:

10. The overall compensation thus, comes to Rs. 46,42,075. The compensation is reduced from Rs. 50,80,000 to Rs. 46,42,075.

11. By an order dated 22.3.2013, the entire award amount was ordered to be deposited. The compensation awarded as above, shall be released/held in fixed deposit in favour of the respondents/claimants in the proportion as directed by the Claims Tribunal.

12. The excess compensation of Rs. 4,37,925 along with proportionate interest and interest earned during the pendency of the appeal shall be refunded to the appellant Insurance Company.

13. The statutory amount of Rs. 25,000 shall also be refunded to the appellant Insurance Company.

14. The appeal is allowed in above terms. Pending applications also stand disposed of.