
(2009) 04 DEL CK 0576
In the Delhi High Court
Case No : FAO No. 178 of 2003

Sh. Om Prakash Mahendra and Others	Vs	APPELLANT
Sh. Nasiruddin and Others		RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0576

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 4th December 2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,40,000 along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. The deceased Sh. Jitendra Mahendera was a young man of 25 yrs of age and was doing business under the name and style of M/s J.K. Diesels at Kashmere Gate, Delhi. On 11th March 1992, at about 2:50 P.M., the said deceased was driving a motor cycle and was coming from the side of the Red Fort on Subhash Marg and was going towards Darya Ganj and when he reached near T-point of Subhash Park he stopped his motor cycle at the red light and in the meantime was hit from behind by a CRPF truck, bearing registration No. BRX 2008, which was being driven rashly and negligently. The impact was so grave that due to the sudden force, the deceased received several fatal injuries and became unconscious. He was removed to L.N.J.P Hospital where he succumbed to his injuries after some days.

4. A claim petition was filed on 6th April 1992 and an award was made on 4th

December 2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. The appellants have assailed the said award on quantum of compensation. Sh. O. P. Mannie, Counsel for the appellants contended that the tribunal erred in passing a lump sum amount of Rs. 1,40,000/- without taking into consideration, the set principles of law and guidelines for computing the compensation payable to the claimants as laid down by the Apex Court and various High Court in various decisions. The case of the appellant is that after assessing the income of the deceased at Rs. 5,000/-per month as per the evidence on record, the Learned Tribunal should have taken into account the future prospects to assess the monthly income of deceased at Rs. 10,000/- per month and then should have assessed the just compensation according to the multiplier method. Further, the counsel submitted that the tribunal should have applied the multiplier of 17 looking at the young age of the deceased. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 12% per annum in place of only 9% per annum. The counsel contended that the tribunal erred in not awarding any sort of non pecuniary damages towards loss of love & affection, funeral expenses, loss of estate, loss of consortium, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants.

6. Nobody has appeared for the respondents although counter affidavit was filed by the respondents. The respondents in their counter submitted that the tribunal rightly allowed lumpsum compensation as in the absence of proof of income, multiplier method cannot be applied. It is also submitted that the deceased died due to his negligence and he was also not having a drivers licence at the time of the accident and therefore no interference should be made in the award.

7. I have heard learned Counsel for the appellants and perused the record.

8. The assessment of damages to compensate the dependants is beset with difficulties because while doing so, many imponderables have to be taken in to account, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years purchase. In this relation, the Apex Court has held in plethora of

judgments that the multiplier method is the best method.

In this regard in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Hon'ble Apex Court observed as under:

12. There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case 3 and the second in Nance v. British Columbia Electric Railway Co. Ltd.

13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier-method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be just, the statutory determination of a just compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a just compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure

from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

9. In view of the aforesaid legal position, the tribunal erred in awarding a lumpsum amount to the appellants petitioners.

10. On perusal of the award it is manifest that Sh. O.P. Mahindra, father of the deceased was examined as PW1 and he had deposed that the deceased was dealing in oil engine parts and had a business in the name & style of J.K. Dealers. The said witness also deposed that said shop of the deceased was not registered. He also deposed that the deceased was earning Rs. 5000 pm and he started the said business only 2 years back. In the statement of the said witness it has appeared that the documents regarding the business of the deceased were filed. It was also mentioned in the cross examination of the said witness that the sales tax returns were filed. But no such documents have been found in the lower court record. After considering all these factors I am of the view that the income of the deceased should be assessed as per the Minimum Wages Act for a skilled workman as on the date of the accident at Rs. 1259/- p.m.

11. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

12. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.

13. Thus, the income of the deceased is assessed in accordance with the minimum wages notified under the Minimum Wages Act.

14. As regards the future prospects, it has been the consistent view of this Court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. A perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

15. Therefore, the increase in minimum wages, while assessing the income of the deceased should be considered for computing compensation towards loss of dependency.

16. As regards the deduction, I feel that 1/3rd deduction shall be just and fair in the facts and circumstances of the case and considering that he is survived by his aged parents. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am inclined to award 1/3rd deductions

towards personal expenses.

17. As regards the multiplier, I feel that multiplier of 8 shall serve the interest of justice. This case pertains to the year 1992 and at that time II schedule to the Motor Vehicles act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon''ble Apex Court in 1994 SCC (Cri) 335 G.M., Kerala SRTC v. Susamma Thomas. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. At the time of the accident, the deceased was of 24 years of age and the appellant No. 1 father of the deceased was aged 54 the years and the appellant No. 2 mother of the deceased was a 49 years of age. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased and after taking a balanced view after considering applicable multiplier under Schedule II to the MV Act the multiplier of 8 should be applied. Therefore, in the facts of the instant case the multiplier of 8 shall be applicable.

18. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 12% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon''ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 9% pa by the tribunal and the same is not interfered with.

19. As regards the non-pecuniary compensation towards loss of love & affection, funeral expenses and loss of estate and the loss of services, which were being rendered by the deceased to the appellants, In this regard I feel that the compensation towards loss of love and affection should be awarded at Rs. 20,000/-; compensation towards funeral expenses should be awarded at Rs. 10,000/- and compensation towards loss of estate should be awarded at Rs. 10,000/-

20. As far as the contention pertaining to the awarding of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of their son and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

21. On the basis of the discussion, the income of the deceased would come to Rs. 1,888.50 after doubling Rs. 1,259 to Rs. 2,518 and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,259 and the annual loss of dependency comes to Rs. 15,108 per annum and after applying multiplier of 8 it comes to Rs. 1,20,864/-. Thus, the total loss of dependency comes to Rs. 1,20,864/-. After considering Rs. 40,000/-, which is awarded towards non-pecuniary damages, the total compensation comes out as Rs. 1,60,864/-.

22. As regards the issue of negligence, it has come on record that PW2 Vimal Bajaj eye witness to the accident and the rukka Ex. PB prove that the deceased on his motorcycle was standing at the red light near Subhash Park T-point and the offending CRPF truck which was being driven in a rash and negligent manner hit the motor cycle from behind due to which the deceased sustained fatal injuries. Considering the deposition of RW1 the driver of the said offending vehicle, who is an interested witness, it is manifest that he is trying to save himself. Be that as it may, no negligence can be imputed to the deceased in absence of any proof. Thus, no interference is made in the award on this Court. As regards the issue that the deceased was driving the motorcycle without having a licence. The said issue is being raised for the first time before this Court and same cannot be raised at this stage.

23. In view of the above discussion, the total compensation is enhanced to Rs. 1,60,864/- from Rs. 1,40,000/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants, in equal proportion, by the respondent Nos. 2 and 3.

24. With the above direction, the present appeal is disposed of.