(2002) 04 DEL CK 0095

In the Delhi High Court

Case No : FAO No. 186 of 2001

Smt. Hussan Bano and Others	APPELLANT
Vs	
Sh. Subhash Chand and Others	RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2002) 2 ACC 249 : (2003) ACJ 1114 : (2002) 7 AD 146 : (2002) 97 DLT 942 : (2002) 62 DRJ 722

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : S.K. Chauria, for the Appellant; Reeta Kaul, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chopra, J.—The appellants are the window and six young children of deceased Imtiaz Ahmed who met with a fatal accident on 5th January, 1992 caused by a DTC bus driven by respondent No. 1. The appellants petition u/s 166 of the Motor Vehicle Act was disposed of by learned MACT vide orders dated 23.12.2000 and a total compensation of Rs. 2,65,000/- was awarded to them. The appellants assails the computation and award of compensation and pray for enhancement of compensation amount.

2. I have heard the learned counsel for the appellants and learned counsel for respondent No. 2. None appeared for Driver, respondent No. 1. I have gone through the trial Court records.

3. The main grievance of the appellants against the computation of the compensation is that the learned MACT computed the compensation on the basis of the salary of Rs. 3500/- per month ignoring the salary statement Ex. PW5/1 which had gone challenged and unrebutted. According to the said statement the salary of the deceased w.e.f. 1.1.1992 had already been raised to Rs. 5000/- per month plus Rs. 1000/- or 50% of annual rent whichever is less towards HRA,

medical expenses up to 50 per cent of his salary per annum on actual voucher basis and one month salary towards LTA every year. It is also submitted that the multiplier applied by learned MACT was on lower side. It is argued that the learned MACT failed to take into consideration the prospects of future increase in the income of the deceased and as such the compensation is required to be enhanced.

4. A perusal of the evidence on record shows that PW5 Sh. Vineet Kansal, Director of Durex Engineers Private Ltd. had deposed on oath that the deceased was a site Engineer in their Company. During probation period he was getting a salary of Rs. 3500/- per month plus Rs. 500/- per month as conveyance allowance. He was confirmed by the Board of Directors w.e.f. 1.1.1992 on consolidated salary of Rs. 5000/- per month plus other allowances as per the rules of the Company. He proved on record a certificate Ex. PW5/1 which gave details of the confirmation of the deceased w.e.f. 1.1.1992 on a consolidated salary of Rs. 5000/- per month and the allowance as stated above. PW5 was not at all cross examined inspire of opportunity and as such the statement of PW5 remains totally unchallenged and unrebutted. In the face of this statement of PW5, the learned Trial Judge was not justified in computing the compensation on the basis of the salary of Rs. 3500/- per month only and as such the compensation to be awarded to the appellants is required to be reassessed as prayed. In view of the Apex Court judgments in Donat Louis Machada and Ors. v. Ravindra and Ors. reported in 2 (2000) ACC 602 (SC) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the Trial Court ought to have taken into consideration the prospects of future increase also in the income of the deceased. The prospects of future advancement in the career and increase in the income of the deceased can be visualized by the Courts keeping in view the nature of vocation, age of the deceased and other relevant factors. In the case of a deceased belonging to a salaried class, the average monthly income of a deceased can be easily calculated by considering the pay which he was drawing at the time of his death and the last pay which he could have drawn at the time of his retirement. The reasonable prospects of his promotions may also be kept in mind. In case of self employed professional also the future advancement of career and increase in income can be assessed on estimated basis. If the income of the deceased at the time of his death was low, the Court may assume 2/3 times increase in his income by the time he would have stopped working. However, in the case of a self employed person having high income future increase can be estimated at a lower level as the expected optimum level also has its own limits. In the case of a businessman the increase in future income has to be construed with due care and circumspection for the reason that a businessman always faces more uncertainties and ups and downs in the course of his business.

5. After considering the submissions made by learned counsel for the parties and the evidence on record particularly the certificate Ex. PW5/1 which is

unchallenged and unrebutted, this Court is of the considered view that w.e.f. 1.1.1992 the salary of the deceased was Rs. 5,000/- per month. The HRA of Rs. 1,000/- per month is also to be added to his monthly income for the reason that this was an additional income and in no case the deceased who was having such a large family could have pad a rental of less than Rs. 2,000/- per month of which Rs. 1,000/- per month would have been the 50%, being the minimum that could have been obtained by the deceased from his employer towards HRA. In the case of Donat Louis Machada & Ors. (supra) the Apex Court took into consideration the prospects of the advancement of the career of the deceased and after adding the present income to the last income which the deceased could have been earning at the end of his career 50 per cent was taken as a mean figure to arrive at the average monthly income of the deceased for the entire span of his working career.

6. In the present case the income of the deceased at the time of his death was Rs. 6,000/- per month inclusive of HRA. He was a qualified Engineer and as such it can be reasonably assumed that by the time of his retirement, his income would have gone up to at least Rs. 10,000/- per month. After adding Rs. 6,000/- to 10,000/- a sum of Rs. 16,000/- per month is arrived at 50% of which comes to Rs. 8,000/- per month. This can be taken as his average income during the remainder of his working career. On the basis of income of Rs. 8,000/- per month the annual income of the deceased comes to Rs. 96,000/- per month which should be the base figure for computing compensation payable to the appellants.

7. In view of the age of the deceased, his vocation and family, this Court feels that multiplier of 8 as adopted by Trial Court was on lower side. A multiplier of 10 would be a proper multiplier in this case. The annual income of Rs. 96,000/- multiplied with a multiplier of 10 comes to Rs. 9,60,000/- out of which 1/3 should be deducted towards the personal expenses of the deceased. Thus, only 2/3 of Rs. 9,60,000/- could be available to the appellants as financial support from the deceased had the deceased not died in this unfortunate accident. 2/3 of Rs. 9,60,000/- comes to Rs. 6,40,000/- which appears to be a just and fair compensation awardable to the appellants in this case.

8. This Court, Therefore, holds that the appellants were entitled to a compensation of Rs. 6,40,000/- inclusive of the compensation payable u/s 140 of the Act. The appeal is, Therefore, allowed and the amount of compensation payable to the appellants is enhanced to Rs. 6,40,000/- with interest @ 9 per cent on the enhanced amount form the date of the filing of the petition till the date of this order. After deducting the amount already paid to the appellants the balance shall be paid to them by respondents within two months failing which future interest shall be payable @ 9 per cent per annum on the enhanced amount from the date of this order till the date of the payment.

9. The apportionment and disbursement of the enhanced amount is left to the discretion of the learned Trial Judge who after hearing learned counsel for the appellants shall pass appropriate order in regard to the apportionment/

disbursement of the amount as well as the deposit thereof in fixed deposits, if so required.

