(2009) 04 DEL CK 0165

In the Delhi High Court

Case No : FAO No. 47 of 2001

Smt. Ishwari Kumari and Others — APPELLANT

Vs

Shri Gurdeep Singh and Others — RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0165

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Appellant; Salil Paul, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 17.10.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 90,000/- along with interest @ 12% per annum to the claimants.

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

3. On 25.5.87 at about 9 A.M., while deceased Shri Satyendera Pal Singh was boarding the bus & had only put foot in the mini bus, bearing registration No. DBP 741, from Bapu Dham Bus Stop, Sardar Patel Marg, New Delhi, all of a sudden the driver sped up the bus & due to sudden application of brakes, the deceased fell down & suffered fatal injuries.

4. A claim petition was filed on 21.11.1987 and an award was made on 17.10.2000. 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. Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 3,500/- per month whereas after looking into the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 7,500/- per month. The counsel submitted that

the tribunal erroneously applied the multiplier of 5 while computing compensation when according to the facts and circumstances of the case multiplier of 15 should have been applied. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 28 yrs. of age only and would have lived for another 50 yrs had he not met with the accident. It was also alleged by the counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in an year and hence, the deceased would have earned much more in his life span. 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 @ 15 % per annum in place of 12% per annum. The counsel also contended that the Tribunal erred in awarding interest only for 5 years. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate and loss of consortium. The counsel also contended that the liability of the insurance company is unlimited & not merely to the extent of Rs. 15,000/- as held by the learned Tribunal. The counsel submitted that the Tribunal erroneously considered the deceased as the passenger in the bus whereas, he was walking on foot when the said offending vehicle hit him & the same is supported by the testimony of PW-5.

6. Per contra Mr. Salil Paul counsel for the respondent stated that the appellants are not entitled to any further amount of compensation over and above the amount already granted by the Tribunal. The counsel also contended that for claiming any increase in the future, cogent and sufficient grounds/reasons are required to be proved by the claimants and in the absence of the same, future increase cannot be taken into account for determining loss of financial dependence. The counsel also contended that the liability of the insurance company is limited to Rs. 15,000/- as the deceased was a passenger in the bus and the same is supported by the testimony of RW-1, PW-3 and PW-4. Counsel for the respondent thus submitted that this Court may not interfere in the compensation amount awarded by the Tribunal, which can not be considered as unjust or unfair.

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

8. As regards the issue of limited liability of the insurance Company, I feel that the contention of counsel for the appellants has no merits. The Tribunal observed in para 3 of the award that the claimants amended the petition to amend the facts of the case by pleading that the deceased was hit by the offending mini bus while walking on the road instead of their earlier version that he fell out of the bus & died. The reason for amendment was stated to be the testimony of PW-5, Sh. Ganesh Kumar, who appeared as a public witness & deposed that the deceased was hit from behind by the offending vehicle. But PW-3 Sh. Raj Kumar,

Conductor of the offending vehicle & PW-4 Sh. Ram Bhure Singh, Head Constable deposed that the deceased fell down from the bus due to sudden application of brakes by the driver. I agree with the observations of the Tribunal that clearly, the amendment is made with the purpose of bringing the deceased in the category of "third party" so that the liability of the insurance company could be extended to unlimited liability. Also, as per the testimony of RW-1, Sh. Ashok Kumar Johri, Sr. Asstt. New India Assurance Co. Ltd. & on perusal of the policy, Ex. PW-1/4, it is manifest that the maximum liability cover for passenger is Rs. 15,000/- and for the third party, the liability is unlimited. Further, on perusal of the testimony of PW-1, Sh. R.P. Sarswat, Medical Officer & post mortem report, Ex. PW-1/1, it is manifest that the deceased died due to fall on the hard surface, further there is no mention of the deceased being hit by a bus. In view of the above discussion, clearly the liability of the Insurance Company is limited to Rs. 15,000/-. Thus, no interference is made in the award on this count.

9. As regards the income of the deceased Shri Prithvipal Singh, the brother of the deceased deposed that the deceased could not join duties in Kenya, else he would have been earning Rs. 7,200/- p.m. He further deposed that prior to joining job in Kenya, the deceased was working in Prakarti Food and was drawing salary of Rs. 3,500/- p.m. On perusal of the records it is manifest that the deceased was a Chemical Engineer in Food Technology and received his degree of Bachelor of Technology from Kanpur University. Perusal of the record further reveals that nothing has come on record to prove that the deceased was working with Prakarti Food and was drawing Rs. 3,500/- p.m. at the time of the accident. Although, it came on record that the deceased was offered employment by Kabausora Limited in Kenya and he was an employee of the same but he did not join the same as he could not fly to Kenya and instead met with the accident. On perusal of the communications of the Kabausora Limited with the deceased, it becomes manifest that the deceased had accepted the employment of the said Kenya based company. Thus, the natural conclusion which is drawn out of this is that the deceased was an employee of Kenya based company on the date of the accident. Therefore, the tribunal erred in assessing the income of the deceased at Rs. 3,500/- p.m. instead of Rs. 7,200/- p.m. the award is modified in this regard.

10. As regards the future prospects I am of the view that there is no sufficient material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case.

11. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 5 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1987 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. The deceased had left behind his mother aged 65 years, his 2 unmarried sisters and an unmarried brother. The deceased was 28 years of age at the time of the accident. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 10 should have been applied. Therefore, in the facts of the instant case the multiplier of 10 shall be applicable.

12. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. Furthermore, the Tribunal did not award interest from the date of filing of the petition till final realization for the reason that the petition was filed in 1988 & till 1994 no steps were taken to summon witnesses & it was towards the end of 1998 that the witnesses were examined. In this regard, I feel that the Tribunal committed no error. The claimants cannot claim benefit when they themselves were negligent in not serving the witnesses till 28.10.1994. 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, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. The award was passed in the year 2000 and the tribunal has awarded interest @ 12% p.a. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 12% p.a by the tribunal and the same is not interfered with. Thus, the award is not interfered with in this regard.

13. On the contention regarding that the tribunal has erred in not granting 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 compensation towards loss of love and affection is awarded at Rs. 40,000/-, Rs. 10,000/- is awarded towards funeral expenses and compensation towards loss of estate is awarded to Rs. 10,000/-.

14. 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 only 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.

15. On the basis of the discussion, the income of the deceased would come to

Rs. 7,200/- and after making 1/3 deductions the monthly loss of dependency comes to Rs. 48,00/- and the annual loss of dependency comes to Rs. 57,600/- per annum and after applying multiplier of 10 it comes to Rs. 5,76,000/-. Thus, the total loss of dependency comes to Rs. 5,76,000/-. After considering Rs. 60,000/-, which is granted towards loss of love & affection, funeral expenses and loss of estate. the total compensation comes out as Rs. 6,36,000/-.

16. In view of the above discussion, the total compensation is enhanced to Rs. 6,36,000/- from Rs. 90,000/-. The differential amount should be paid to the appellants by the respondent Nos. 1 & 2 with interest @7.5% p.a. on the enhanced compensation from the date of filing of present petition till realisation. Out of the enhanced compensation 53% be paid to the mother of the deceased and 15% each be given to two sisters and one brother.

17. With the above directions, the appeal is disposed of.