
(1995) 07 DEL CK 0034
In the Delhi High Court
Case No : F.A.O. No. 180/81

Smt. Kailash Rani and others

APPELLANT

Vs

Sh. Satya Pal Singh and others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Citation : (1995) 2 ACC 368 : (1996) ACJ 297 : AIR 1996 Delhi 98

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant;

Judgement

1. The present appeal is directed against the award dated October 27, 1980 of Shri H. P. Bagchi, Judge, Motor Accident Claims Tribunal, Delhi. The appellants-claimants filed a petition u/S. 110-A of the Motor Vehicles Act against the respondents claiming compensation of Rs. 5 lakhs for the death of Harbans Lal in a motor vehicle accident which took place on 25th February, 1977 at about 12 p.m. at Ring Road, Delhi. It is alleged that the said accident was caused on account of rash and negligent driving of motor vehicle No. DLP 5166 on the pan of respondent No. 1. The offending vehicle was owned by respondent No. 2 and insured with respondent No. 3.

2. The brief facts of the case are that on February 25. 1977 at about 12 p.m. the deceased along with Kishan Lal was going from his restaurant in Darya Ganj on a motor cycle No.DLM 8231 on Ring Road. The motor cycle was driven by the deceased and Kishan Lal was sitting on the pillion seat. When the motor cycle reached a place known as Bela Road from Alipur Road, bus No. DLP 5166 which was being driven by respondent No. 1 at an excessive speed rashly and negligently came on the other side of the road and knocked down the said motor cycle. The bus was at a high speed that even after the accident the driver was unable to control the same and dragged the motor cycle for a long distance. It was alleged that the deceased was rushed to hospital where he died on the same day. Respondent No. 1 was driving the bus in the course of his employment and

under the control and permission of respondent No. 2 and the said respondent is vicariously liable to pay the compensation for the tortious act committed by respondent No. 1. The vehicle was insured with respondent No. 3 and it was alleged that all the respondents were jointly and severally liable to pay compensation. The appellants have suffered and undergone untold pain, agony, mental anguish and sufferings by the sudden loss of life of the bread earner of the family and they have been rendered destitute and helpless as the deceased was the only earning member in the family. The history of longevity in the family was traced and it was contended before the Tribunal that if the deceased had not been killed in the unfortunate accident he would have progressed in his business and his income would have increased to Rs. 5,000/-to Rs. 6,000/-per month.

3. The petition was contested by respondents 2 and 3 and the matter proceeded ex parte against respondent No. 1. The usual pleas of denial were taken in the written statement by the respondents. The Insurance Company, respondent No. 3, took a preliminary objection that respondent No. 2 violated the terms and conditions of policy and, as such, the company was not liable to any compensation. It was also contended that the liability of the respondent company was limited to the extent of Rs. 50,000/-.

4. On the pleadings of the parties, the following issues were framed :

1. Whether Shri Harbans Lal Smrat died as a result of rash and negligent driving of bus No. DLP 5166 on the part of respondent No. 1 as alleged?

2. Whether the petitioners are the legal representatives of the deceased?

3. To what amount of compensation, if any, are the petitioners entitled and from whom?

4. Relief.

5. The Tribunal on assessment of evidence on record disposed of issue No. 1 by holding that the accident took place due to rash and negligent driving of offending bus No. DLP 5166 on the part of the driver, respondent No. 1. The respondents did not examine the driver of the offending bus, who would have been the best person to explain as to how the bus came over on the wrong side of the road and caused accident. In this situation, the Tribunal was correct in arriving at a conclusion that the deceased died as a result of rash and negligent driving of respondent No. 1. The other evidence on record reiterates this finding. I see no reason to interfere with the same. The finding is, accordingly, affirmed.

6. Issue No. 2 was disposed of in favor of the appellants and it was held that all the appellants were the legal representatives of the deceased.

7. The Tribunal then proceeded to determine the quantum of compensation, which was assessed on the basis of evidence on record. The reference to the witnesses PW 3 and PW 9 was made wherein these witnesses stated that the deceased used to contribute Rs. 2,000/- per month to the family after meeting

the business expenses. The Court, however, arrived at an adverse conclusion on the ground that no documentary evidence relating to the Income Tax for the year 1977-78 had been filed to show the actual income of the deceased from his restaurant business except the above statements of the widow and the daughter of the deceased. The learned Judge reiterated that there was no reason why documentary evidence had not been produced in this regard which would have clinched the issue. The Court further held that the appellants have only belatedly filed copies of the assessment orders relating to the years 1967-68 and 1968-69 while the accident took place in the year 1977 and, Therefore, the correct income of the deceased could not be assessed. The statements of the witnesses with regard to the income of the deceased were not believed in entirety. The evidence on record indicated that the deceased was running his restaurant business under the name and style of M/s. Samrat Restaurant as a sole proprietary concern and the learned judge concluded that it could safely be assumed that the restaurant being an Eating House must be having flourishing business catering to the entire family consisting of nine members, including the mother, widow and seven daughters and one son ranging between the age group of 5 years to 25 years and all the children were being looked after and receiving education. The Judge did not accept the statement that the deceased was also having income from dairy business for want of corroboration by independent evidence, oral or documentary. The monthly income in this situation was assessed at Rs. 1,000/- and after deducting 1/3rd from that amount towards personal expenses, the dependency was assessed at Rs. 667/- per month. The deceased was held to be aged 52 years at the time of his death and by using the multiplier of 15 years, the Tribunal assessed the compensation at Rs. 1,20,060/-. The said amount was further reduced after taking into account the insurance money received by the appellants and 10 per cent. deduction for acceleration of pecuniary gain. Further deduction for lump sum payment was made in the region of 15%. The total amount, Therefore, was determined at Rs. 1,02,051/-.

8. I have heard learned counsel for the appellant and perused the evidence on record. There has been no appearance on behalf of the respondents. The Tribunal has not given any cogent ground to discard the testimony of PW 3 and PW 9 to the effect that the deceased used to contribute Rs. 2,000/- per month for the family after meeting the business expenses. The learned Judge has based his assessment on mere conjectural grounds and it is not clear as to how he arrived at a figure of Rs. 1,000/- per month. The deceased left behind a large family and it is admitted that he was the only earning member. The law is also well settled that the courts can take into consideration the prospects of the future in estimating the gross income and it will not be unreasonable to estimate the loss of dependency by taking that consideration into account. Future prospects of advancement in the business career, particularly when it is held that the deceased was running a flourishing restaurant business has some role to play in making an estimate of monthly income of the deceased. General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and

others, .

9. In the facts of the present case, I am inclined to assess the income of the deceased in the sum of Rs. 2,000/- per month. The contribution of the deceased towards his family after taking into account the deduction for personal expenses can be assessed at Rs. 1,500/- per month which is just, fair and reasonable in this case. There has been no serious challenge to the multiplier of 15 years adopted by the Tribunal in view of the age of the deceased. The annual amount which the deceased was spending for his family would come to Rs. 18,000/- (Rs. 1,500 x 12) which multiplied by 15 comes to Rs. 2,70,000/-. I, Therefore, assess the amount of compensation to be allowed to the appellants-claimants at Rs. 2,70,000/-.

10. The question now arises as to whether the Insurance Company, respondent No. 3, is to discharge the entire liability or its liability is limited to the extent of Rs. 50,000/- only, as held by the Tribunal. The learned Judge has referred to the evidence on record (R 3 W 1 Shri O. P. Sethi) to the effect that neither the original nor the copy was prepared in the presence of the witness and also the terms and conditions were not mentioned in his office copy. It was, however, held that the relevant document Ex. R 3 W 1 /3 which was alleged to be the office copy was in fact prepared simultaneously along with the original document in as much as the carbon copy was prepared along with the original document. I have perused the alleged carbon copy of the policy which indicates the total premium including the basic premium paid in respect of the insurance of the vehicle. The perusal of the said copy clearly will show that the blanks have been filled at the subsequent stage as they are filled in ink at various places. The witness, as referred to above, has also stated that he had not seen the original policy. It was also correct that all the entries in the office copy brought by this witness were not the carbon impression and there were cuttings in the office copy and the word unlimited had been deleted in ink and the figure of Rs. 50,000/- was written by hand. The policy was not prepared by this witness. In this situation, it cannot be said that the policy produced was true copy of the original. The premium paid would show that it was not the "Act only" policy and was a "comprehensive policy" on the basis of the premium paid as referred to in the tariff chart which was produced before me by learned counsel for the appellant. Therefore, the finding of the Tribunal that it is evident from the break up of the amount that no additional premium has been charged for covering unlimited liability on the part of the Insurance Company cannot be sustained in the absence of cogent evidence to prove the policy and other material to indicate that the liability is limited.

11. Reference may be made to the judgment of this Court as reported in Usha Sehgal and others Vs. Chhote Ram and others, where similar pleas were raised. The so-called policy which has been produced before the Tribunal indicates that it was not "Act only" policy for which the maximum premium was fixed at much lower figure than the one paid for comprehensive insurance. The learned judge in

the above cited case referred to a policy called "comprehensive policy" which takes care of the liability to pay compensation to the owner or to a passenger or to a third party. The additional premium is taken for additional risk, such as fire, riots etc. If this is a "third party policy" or a "comprehensive policy", the insurance company will be bound to pay higher compensation which will be higher more than the compensation under "Act only" policy. "The claimants are strangers to the policy. The original policy is in possession of the owner of the vehicle and a copy is maintained by the insurance company". Neither the owner nor the insurance company even in the present case has proved by sufficient evidence to indicate that the policy produced before the Tribunal was true carbon copy of the original. The evidence of their own witness belies this averment. The policy, Therefore, in this situation can be held to be comprehensive policy and not the "Act only" policy and in the absence of proof to the contrary it can safely be held that the liability of the company is unlimited.

12. In view of the above, the liability of the Insurance Company, respondent No. 3 is held to be unlimited. The appellants shall be entitled to interest at the rate of 15 per cent per annum from the date of petition before the Tribunal till realisation. The amount, if any, which has been disbursed to the appellants shall be taken into consideration while working out the amount now held payable. The appeal is allowed in the above terms with costs, which are quantified at Rs. 5,000/-.

13. Appeal allowed.