
(2008) 07 DEL CK 0133
In the Delhi High Court
Case No : MAC App. No. 333 of 2008

Smt. Laxmi Devi and Others

APPELLANT

Vs

Shri. Baldev Singh, Shri Ranjit Singh and United India
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Citation : (2008) 07 DEL CK 0133

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Pooja Goel, for the Appellant; Sameer Nandwani, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal has been filed for enhancement of the award amount by the Legal Heir's of the deceased Ajit Singh, who died in a road accident.

2. Brief facts of this case are that on 24th September, 2006, the deceased Ajit Singh was driving his two wheeler scooter bearing No. DL 4S 9607 and was going towards Kirti Nagar for attending a complaint of fridge repair and was waiting for light to turn green. In the meanwhile, offending truck bearing No. HR-38-D- 3828 which was being driven by respondent No. 1 at a high speed and in a rash and negligent manner came from the side of Raja Garden and jumped the red light and hit into the scooter and crushed it. The pillion rider died on the spot and the injured was taken to DDU Hospital, where he died on 25th September, 2006. An FIR in this case was registered at P.S. Kirti Nagar.

3. The deceased was 26 years of age and was working as trained fridge repair mechanic earning Rs. 10,000/ - p.m. The deceased is survived by his wife, parents and two minor sons, who have claimed compensation in the sum of Rs. 27,82,000/ - from the respondents who are the driver, owner and insurance

company of the offending truck.

4. The learned Tribunal vide judgment dated 15th February, 2008, passed an award in the sum of Rs. 6,83,000/- in favour of the appellants along with interest @ 7.5% p.a. from the date of decision of the petition till the date of payment.

5. It has been contended by learned Counsel for the appellant that the learned Tribunal has failed to take into consideration the income of the deceased as Rs. 10,000/- p.m., while in support of income the cash memo Ex.PW3/6 have been proved on record. The deceased was 34 years of age on the date of accident and as such the appropriate multiplier under the Second Schedule of the Act would be 17 and Tribunal without giving any reasons has applied the multiplier of 15. The Tribunal has also failed to award any damages towards loss of estate and ought to have awarded interest @ 12% p.a. since the interest rate 7.5% is on lower side. Further, the Tribunal wrongly deducted 1/3rd towards the personal expenses of the deceased ignoring the fact that the deceased was the only bread earner of the family and either 1/5th or at best 1/4th of the income towards personal expenses should have been deducted by the Tribunal and in support of its contention learned Counsel for the appellant has cited a recent decision of this Court in Kailashwati and Ors. v. Balbir Singh and Ors. 2 (2008) ACC 49.

6. The Hon'ble Apex Court in plethora of cases has held that while assessing the income of the deceased in motor accident cases, the Tribunals should bear in mind that the same should be assessed on the basis of the cogent and the reliable evidence produced and duly proved on record.

7. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident then the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be taken into consideration.

8. In the present case, the Appellant No. 1 deposed that the income of the deceased was Rs. 10,000/- per month and in support of her deposition, she had produced one cash memo Ex.R-6. Further, from the testimony of PW3 (i.e. Appellant No. 1), it is shown that deceased was working as Fridge Repair Mechanic on contract basis. However, no documentary proof of income has been placed on record.

9. Thus, in the absence of any other evidence, the Ld. Tribunal had taken the help of Minimum Wages Act to assess the monthly income of the deceased, which is the right approach adopted by it. Thus I do not find any infirmity on the findings of the Tribunal on this issue.

10. As regards the contention of multiplier, the Apex Court in the case of U.P. State Road Transport Corpn. v. Krishna Bala and Ors. 3 (2006) ACC 361 (SC) has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

6. Certain principles were highlighted by this Court in the case of *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death. "How much has the widow and family lost by the father's death?" The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* All ER p. 665 A- B, which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies* case (supra) and the second in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 (2) All ER 448.

8. 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.

Further Court held that;

10. In regard to the choice of the multiplicand the *Halsbury's Laws of England* in Vol. 34, Para 98 states the principle thus:

98. Assessment of damages under the Fatal Accidents Act 1976 - The courts have evolved a method for calculating the amount of pecuniary benefit that dependents could reasonably expect to have received from the deceased in the future. First the annual value to the dependents of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the

period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death.

11. As to the multiplier, Halsbury states:

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependents can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependents will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.

11. The Apex Court in *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, has observed as under;

8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents 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.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct there from 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 dependents. Then that should be capitalized by multiplying it by a figure representing the proper number of years" purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters" and the court must try to assess as best as it can the loss suffered.

12. The sum and substances of the various decisions of the Apex Court is that the compensation paid to the dependent family members of the road victim should be just and reasonable and in every case it is the overall picture that matters and the Court must try to assess as best as it can for the loss suffered.

13. The Appellant No. 1, wife of the deceased, has deposed in her testimony that her husband was 34 years old at the time of his death. The copy of Election I card of the deceased is Ex. PW3/3 according to which his age was 22 years as on 1.1.94. Thus, the age of the deceased is taken to be 34 years at the time of accident.

14. Considering the age of the deceased and the principles as set out above, the multiplier 15 as adopted by the Tribunal is clearly defensible.

15. As regards the award of interest @ 7.5% per annum by the Tribunal, I do not find any justification for increasing the same to 12% p.a. as there has been variation in the rate of interest in various decisions given by the Supreme Court.

16. Even otherwise Counsel for the appellants has not given any justification for the award of higher rate of interest except placing reliance on the judgment passed by the higher Courts. There cannot be any dispute that in many other judgments of the Supreme Court it has granted lower rate of interest also at 6.5% and in some cases it has been 7.5% and in some other matters it is 9% as well.

17. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, cited by learned Counsel for the appellant, the Apex Court has observed that;

The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

18. In view of the above decision, I am of the opinion that the award of interest @ 7.5% cannot be considered to be lower side. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal in awarding 7.5% interest on the award amount.

19. As regards the contention of 1/3rd deduction, the deceased is admittedly survived by his wife, parents and two minor children. In a plethora of cases, the Apex Court and various High Courts have held that 1/3rd amount of the income should be deducted towards self-expenses.

20. In New India Assurance Co. Ltd. Vs. Charlie and Another, the Apex Court has observed as under;

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned Counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.

21. I am, therefore, not inclined to take any contrary opinion. Thus, there is no scope for further deduction.

22. Keeping in view all the facts and circumstances brought on record, I am of the view that the compensation as awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

23. The present appeal is, therefore, dismissed.