
(2007) 04 DEL CK 0085

In the Delhi High Court

Case No : MAC. APP. No's. 354-57 of 2005

Smt. Surajwati and Others

APPELLANT

Vs

Ajay Saini and Others

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Citation : (2007) 04 DEL CK 0085

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : S.N. Parashar, for the Appellant; S.K. Ray, for R-2, for the Respondent

Judgement

Pradeep Nandrajog, J.—On 20.4.2002, deceased Mam Chand died in a road accident involving Bus No. DL-1PB-1088. He was survived

by his wife and three sons.

2. Dependents filed a claim petition claiming a compensation of Rs. 10 lacs on account of death of deceased in the said road accident.

3. After holding driver of offending bus, guilty of rash and negligent driving, learned Tribunal awarded compensation in sum of Rs. 3,21,840/- to

the dependents. Break up of the compensation is as follows:

Loss of dependence : Rs. 2,94,840/- (In the award, due to typographical error, this sum has been wrongly mentioned as Rs. 2,96,840/-).

Funeral expenses : Rs. 2,000/-

Non pecuniary

damages : Rs. 25,000/-

Total : Rs. 3,21,840/-

4. Aggrieved by the amount of compensation, dependents/appellants have filed the present appeal praying for enhancement of compensation.

5. As only enhancement of compensation is prayed for, I will only be noting facts as are relevant for determination of said issues.

6. Wife of the deceased stepped into the witness box as PW-1 and deposed that her husband was a trained electrician and was earning Rs.

6,000/- per month at the time of the accident.

7. Son of the deceased Vinod Kumar in his testimony as PW-3 also deposed that his father was a trained electrician. He also placed on record

admission card issued to deceased by Office of Electrical Inspector for Class II Certificate of Competency (Wire Man) Examination (Ex.PW-

3/A), a receipt dated 15.6.1985 issued by employer of the deceased (Ex.PW-3/B) and a bill dated 3.4.1991 issued by deceased to a customer

(Ex.PW-3/C) to show that the deceased was working as an electrician at the time of the accident.

8. Relying upon the aforementioned testimony of wife and son of the deceased, learned Tribunal has held that deceased was earning his livelihood by

working as an electrician. But, in absence of any clear and cogent evidence showing the income of the deceased at the time of the accident,

Tribunal has taken guidance of the minimum wages notified under the Minimum Wages Act to determine the income of the deceased. Tribunal has

placed deceased in the category of semi-skilled labourer. Minimum wages of semi-skilled labourers on 1.8.2002 was Rs. 2,845.70/- per month.

Thus, learned Tribunal has taken Rs. 2,845/- as the monthly income of the deceased at the time of the accident. Deducting 1/3rd for the personal

spending of the deceased, loss of dependence is determined at Rs. 1,890/- per month.

9. Noting that deceased was aged 46 years at the time of the accident, Tribunal has applied the multiplier of 13. Thus, total loss of dependence is

determined at Rs. 2,94,840/- (Rs. 1,890 x 12 x 13). Adding thereto Rs. 25,000/- under the head "non pecuniary damages" and Rs. 2,000/- for

funeral expenses, total compensation is determined at Rs. 3,21,840/-.

10. Learned Counsel for the appellants has challenged the award on 4 counts. One, Tribunal has incorrectly taken the age of the deceased at the

time of the accident as 46 years. Two, while determining loss of dependence,

Tribunal has incorrectly determined monthly income of the deceased at the time of the accident on the basis of minimum wages. Three, while determining loss of dependence, Tribunal has ignored the prospects of future increase in the income of the deceased. Four, multiplier adopted by the Tribunal is on the lower side.

11. On the issue of age, I note that the Tribunal has determined the age of deceased at the time of the accident on the basis of postmortem report(Ex.P-3). Certificate of insurance issued by LIC (Mark A) was placed on record by the dependents which records date of birth of deceased as 25.10.1959. Date of accident is 20.4.2002. Thus, age of deceased at the time of the accident was 43 years. In my opinion, learned Tribunal erred in relying upon postmortem report when there was clear evidence showing the age of the deceased at the time of the accident. Thus, I take the age of the deceased as 43 years at the time of the accident.

12. On the issue of income of the deceased, learned Counsel for the appellants contended that there was ample evidence before the Tribunal showing the income of the deceased at the time of the accident. He further contended that testimony of wife and son of the deceased as also the documents produced by the son of the deceased clearly established that deceased was earning Rs. 6,000/- per month at the time of accident.

13. I do not agree with the learned Counsel for the appellants. Self serving statements of the wife and son of the deceased pertaining to income of the deceased has rightly been rejected by the Tribunal. The aforementioned documents (noted in para 7 above) produced by the son of the deceased merely show that the deceased was a trained electrician and do not in anyway establish the income of the deceased at the time of the accident.

14. However, learned Tribunal has erred in placing deceased in the category of semi-skilled labourer. Documents produced by the son of the deceased prove beyond doubt that the deceased was a trained electrician. Thus, Tribunal ought to have placed deceased in the category of skilled labourer. Minimum wages of skilled labourers as on 1.8.2002 was Rs. 3,103.70/-. Thus, I take Rs. 3,100/- as the monthly income of the deceased at the time of the accident.

15. No evidence has been led to show the prospects of future increase in the income of the deceased. However, 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. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in

the year 1990. Meaning thereby, from year 1980 to year 1990, there has been an increase of nearly 238% in the minimum wages. Similarly,

minimum wages of skilled labourers as on 1.1.1990 was Rs. 1,083/- per month and same rose to Rs. 2,948/- per month in the year 2000. Meaning

thereby, from year 1990 to year 2000, there has been an increase of nearly 172% in the minimum wages. Thus, it could safely be assumed that

income of the deceased would have doubled in the next 10 years. Therefore, I take mean average income of the deceased as Rs. 4,650/- (Rs.

3,100 + 6,200 / 2 = Rs. 4,650/-).

16. Noting that sons of the deceased were aged 25, 23 and 16 years respectively, I consider deduction of 1/3rd for the personal spending of the

deceased as appropriate. Thus, average loss of dependence is determined at Rs. 3,100/- per month.

17. On the issue of multiplier, learned Counsel for the appellants has contended that multiplier of 13 applied by the Tribunal is on the lower side.

He further contended that Second Schedule provides for a multiplier of 15 in case of deceased aged between 40 years - 45 years. Thus, Tribunal

ought to have applied multiplier of 15. He relied upon unreported decisions of the Supreme Court in Savita Sharma and Ors. v. Union of

India/Chandigarh Administration and Anr. (Civil Appeal No. 6441/2000 decided on 16.1.2007) and M. Lakshmi and Ors. v. E.V. Kumar and

Anr. (SLP Civil No. 5694/2006 decided on 2.2.2007) in support of his contention that multiplier adopted should be on the basis of Second

Schedule appended to the Motor Vehicles Act 1988.

18. In Savita Sharma's case (supra), noting Second Schedule Supreme Court applied a multiplier of 11 in case of a deceased aged 53 years. In

M. Lakshmi's case (supra), Supreme Court applied a multiplier of 18 in case of deceased aged 26 years. But, both decisions, by a Bench of 2

Judges, have not noted earlier decisions on the issue by larger benches.

19. Second Schedule was appended to the Motor Vehicles Act 1988 in the year 1994.

20. Second Schedule was considered by a Three Bench Judge in the decision reported as U.P. State Road Transport Corporation and Others Vs.

Trilok Chandra and Others, . It was observed para 18 as under:

We must at once point out that the calculation of compensation and the amount worked out in the schedule suffer from several defects. For

example, in item No, 1 for a victim aged 15 years, the multiplier is shown to be 15 years" and the multiplicand is shown to be Rs. 3000. The total

should be $3000 \times 15 = 45,000$ but the same is worked out at Rs. 60,000. Similarly, in the second item the multiplier is 16 and the annual income is

Rs. 9000; the total should have been Rs. 1,44,000 but shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the

Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide.

21. 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.

22. I refer to another set of decisions wherein Supreme Court has applied multiplier on the basis of age of the deceased, age of dependents and

other attendant circumstances. 2nd schedule has been deviated from. They are as follows:

1. Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, Supreme Court applied a multiplier of 12 in case of deceased aged

38 years.

2. The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, : Supreme Court applied a multiplier of 13 in case of a deceased aged 34

years.

3. U.P. State Road Transport Corporation Vs. Krishna Bala and Others, : Supreme Court applied a multiplier of 13 in case of deceased aged 36

years.

4. The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, : Supreme Court applied a multiplier of 12 noting the age of

the parents who were aged 47 years and 43 years respectively, Deceased was aged 18 years.

5. The New India Assurance Company Limited Vs. Smt. Kalpana and Others, : Supreme Court applied a multiplier of 13 in case of a deceased

aged 33 years.

6. The Managing Director, TNSTC v. Sripriya and Ors. Civil Appeal No. 1200/2007 decided on 8.3.2007: Supreme Court applied a multiplier of

12 in case of a deceased aged 37 years.

23. In the light of aforementioned decisions and the age of the deceased, I consider multiplier of 11 as appropriate.

24. Thus, total loss of dependence comes to Rs. $3100 \times 12 \times 11 =$ Rs. 4,09,200/-.

25. Tribunal has awarded Rs. 2,94,840/- under the head "loss of dependence". Thus, compensation under this head is increased by a further sum

of Rs. 1,14,360/-.

26. Appeal stands disposed of by enhancing the compensation by a sum of Rs. 1,14,360/-.

27. Enhanced compensation shall be paid together with interest @ 6% per annum from date of claim petition till date of realization.

28. Enhanced compensation shall be paid to the widow of the deceased i.e. appellant No. 1. Enhanced compensation together with accrued

interest shall be invested in a fixed deposit with a nationalised bank or post office for a period of 5 years. Monthly or quarterly or half yearly

interest would be permitted to be withdrawn by parties.

29. No costs.

30. LCR be returned.