(2001) 08 DEL CK 0190

In the Delhi High Court

Case No : CM No. 384 of 2001 in LPA No. 55 of 1991 & LPA No. 55 of 1991

Smt. Usha N. Dadlani and Others — APPELLANT

Vs

Shri Anil Kumar Oberoi and Others — RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D
Motor Vehicles Act, 1988 — Section 168(1)

Citation : (2001) 08 DEL CK 0190

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. O.P. Goyal and Mr. Anand Kumar, for the Appellant; Mr. Salil Paul, for the Respondent

Final Decision : Allowed

Judgement

Arijit Asayat, C.J.—This is an appeal under Clause 10 of the Letters Patent. Judgment of learned Single Judge in FAO No.190 of 1981 dated 30.08.1991 is under challenge. The appeal before learned Single Judge was u/s 110D of the Motor Vehicles. Act, 1939 (hereinafter referred to as the ''old Act'')

2. Stand of the appellant is as follows:-

Appellants (hereinafter referred to as ''claimants'') are the widow, daughter and son of Shri Narender N. Dadlani (hereinafter referred to as ''the deceased'') who succumbed to injuries sustained on account of fatal vehicular accident on 02.11.1997 Offending vehicle was the subject matter of insurance with New India Assurance. Co. Ltd. (hereinafter referred to as ''insurer'') The deceased was working as an employee of the Delhi Vidyut Board (hereinafter referred to as the ''Board'').It was their stand that the deceased was getting about Rs.1,100/- per month at the time of accident. The claim of Rs.5 lakhs was lodged before the Motor Accident Claims Tribunal (in short, the Tribunal). In consideration of the materials borough-on-record more particularly the pay particulars, the compensation was fixed at Rs.1,00,351/- by the Tribunal. In appeal, learned

Single Judge enhanced the compensation to Rs.2,40,000/- Multiplier adopted by the Tribunal was 15, while the learned Single Judge enhanced it to 25. Interest @12% was also allowed from the date of filing claim application. It is to be noted that the Tribunal had directed payment of interest @ 6% from the date of the realization of award in case the amount was not paid within sixty days from the date of award.

3. This appeal has been filed with a prayer for enhancement of the amount fixed by the learned Single Judge on the ground that the relevant factors were not taken into account. The multiplier adopted is also assailed to be on the lower side. It is submitted that the future potentialities for in crease in emoluments have not been taken into account.Strong reliance is placed on a decision of the Apex Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . On the other hand, learned counsel for the insurer submitted that the multiplier adopted by learned Single Judge is much higher than the maximum permissible limit, as indicated by the Apex Court in several decision. According to him, interest @ 12%, as granted, is also on the higher side.

4. Residual question is whether quantum of compensation as fixed can be termed as just compensation. Undisputedly, the deceased was aged about 34 years at the time of accident. Appropriate multipliers to be adopted in respect of persons belonging to different age and income groups have been discussed by the Apex Court in General Manger, Kerala State Road Transport Corporation''s case (supra) and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,

5. The topic of compensation for causing death by negligent driving came up for serious discussion before the Apex Court in Gobald Motor Service Ltd. R.M.K. Veluswami, 1958 ACJ 179 . The Apex Court referred to the House of Lords decision in Davies. V. Powell Duffrin Associated Collieries Ltd. (1942) AC 601 and quoted the following passage from the judgment:-

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value.In assessing the damages all circumstances, which may be legitimately pleaded in diminution of the damages must be considered. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing.On the one hand, the loss to him of the future pecuniary benefit, and, on the other hand, any pecuniary advantage which from whatever source comes to him by reason of he death".

6. The Apex Court also referred to the judgment by Viscount Simon in Nance v. British Railway Co. Ltd. (1951) AC 601, in which the same principles were enunciated for estimating the damages,the method adopted, however, differed. Various factors that would enter the calculation as per Viscount Simon were set out in the judgment as under:-

" ... at first the deceased man''s expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents.; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime , and other circumstances; thirdly the estimated annual sum is multiplied by the number of years of the man''s estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate, and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation;.

7. The same principles were recalled by the Apex Court in the case of Kamta Prasad and Another Vs. Jaggan and Co. and Another, . In this case, the claim for compensation arose on account of loss of life caused by the collapse of the Clock Tower abutting a highway. The Apex Court had referred to both the aforementioned judgments and extracted the following passage from the judgment in the case of Davies (1942) AC 601 :-

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon 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 by 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 he widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt".

8. In General Manager, Kerala State Road Transport Coporation''s case (supra) , the Apex Court culled out the basis principles governing the assessment of compensation emerging from several legal authorities and reiterated that the multiplier method is the second method of assessing compensation. It was observed as follows:-

"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, which 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".

9. The principle was explained and illustrated by a mathematical example:-

"The multiplier represents, the number of years'' purchaser on which the loss of dependency is capitalized.Take, for instance, a case where annual loss of dependency is Rs. 10,000/-. If a sum of RS.1,00,000/- is invested at 10 per cent annual interest, the interest will take care of the dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5 per cent per annum and no 10 per cent, then the multiplier needed to capitalize, the loss of the annual dependency perpetually. The allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last, etc. Usually in English Courts, the operative multiplier rarely exceeds, 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up".

10. It was clarified that there should be no departure from the multiplier method on the ground that Section 110-B of the Act corresponding to the provision of Section 168(1) of Motor Vehicles Act, 1988 (hereinafter referred to as the Act'') envisaged payment of just compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.

11. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it was observed at paragraph 18 as follows:-

"18. We must once again 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, he multiplier is shown to be 15 years and the multiplicands is shown to be Rs.3,000/-. The total should be Rs.3,000/--x15 =Rs.45,000/- but he same is worked out at Rs.60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs.9,000/- the total should have been Rs.1,4,000/- but is 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. Besides, the selection of multiplier cannot in all cases by solely dependent on the age of the deceased. For example if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case (supra)

12. Judged in the background of what has been stated by the Apex Court in General Manager, Kerala State Road Transport Corporation and U.P. State Road Transport Corporation cases (supra) , the multiplier as adopted by learned Single, Judgment is definitely on the higher side. The appropriate multiplier would be 15. The learned Single Judge did not have the advantage of taking note of the said two decisions, which were rendered after the decision in the FAO. Nevertheless, taking into account what has been stated in U.P. State Road Transport Corporation case (supra) more particularly in paragraph 18, as indicated above, by taking the appropriate multiplier, ie., 15 also the amount payable comes to about Rs.2,52,000/- It is an accepted position that the insure has deposited Rs.2,40,000/- as was determined by learned Single Judge as compensation along with 12% interest. The balance Rs.12,000/- with interest @ 12% from the date of application before the Tribunal shall be paid to the claimants within 3 months from today. Challenge to the rate of interest as raised by the insurer is not tenable in the absence of cross-appeal.

13. This appeal is allowed to the extent mentioned hereinabove.

