**(2008) 03 DEL CK 0233**

**In the Delhi High Court**

**Case No :** MAC App. No. 695 of 2006

Smt. Varsha Chadha and Others APPELLANT

Vs

Shri Ajit and Others RESPONDENT

**Date of Decision :** 13-03-2008

**Acts Referred:**

**Citation :** (2008) 03 DEL CK 0233

**Hon'ble Judges :** Kailash Gambhir, J

**Bench :** Single Bench

**Advocate :** D.S. Dalal and Ashutosh Pandey, for the Appellant; D.K. Sharma, for the Respondent

## Judgement

Kailash Gambhir, J.—By way of the present appeal appellants seek enhancement in the compensation amount over and above the amount of Rs. 26,000/- awarded by the Tribunal. Brief summary of the facts of the case are:

The deceased Shri Pradeep Chadha had boarded the bus bearing registration No. DL-IP-6542 on route No. 247 on 14.3.1996 at about 1.50 p.m. from the bus stand, Partap Nagar Gurudwara, for going to ISBT along with his wife and children. The deceased was holding his son in his laps near the front gate and the bus started. The driver of the said bus was driving the bus rashly and negligently and without blowing any horn. He turned the bus and applied the brakes at once as a result of which the deceased fell down on the road which resulted in the injuries sustained by him. He was removed to Hindu Rao Hospital and from where he was referred to Ram Manohar Lohia Hospital on the same day. He was operated in Ram Manohar Lohia Hospital and remained admitted upto 27.3.1996. Thereafter he was again admitted in Tirath Ram Hospital on 7.9.2006 and was discharged on 9.8.2006 and ultimately he died on 22.5.2000.

2. Mr. Dalal, counsel appearing for the appellant contends that the appellant had received serious head injuries in the accident caused on 14th March, 1996 and immediately after the accident he was admitted in Hindu Rao Hospital and

thereafter in the RML hospital in August, 1996. The deceased was also admitted in the Tirath Ram Hospital. The contention of the counsel for the appellant is that due to serious injuries sustained by the injured, the victim had ultimately died on 22.5.2000, but the learned Tribunal by adopting a very casual approach has not given any weightage to the death of the victim and has granted meager amount of Rs. 26,000/- towards compensation. Counsel for the appellant sought to urge that the appellant in her evidence had clearly stated that the deceased remained under continuous treatment and the said affidavit was filed in the year 2005 and was exhibited on 23rd March, 2005. The contention of the counsel for appellants is that there was no cross-examination on the deposition of the appellant and therefore, the Tribunal ought to have believed the version of the appellant/ claimant wherein she deposed about the continuous treatment of the deceased from the date of the accident till the date of filing of the petition. Counsel thus contends that he remained under treatment for a period of about four years, but the Tribunal has not granted adequate amount of compensation in favour of the dependent members. Counsel for the appellants further contends that the Tribunal has wrongly deducted 1/3rd income towards personal expenses of the deceased as the present case has been decided by the Tribunal taking the case to be an injury case and not a fatal accident case. Counsel for the appellant further contends that the Tribunal has not awarded any amount of compensation towards special diet and conveyance and no amount has been granted towards pain and sufferings. The rate of interest awarded by the Trial Court is also on the lower side.

3. Mr. D.K. Sharma counsel appearing for the respondent on the other hand submits that since the victim himself had died after a lapse of some period, therefore, no compensation could be awarded towards pain and suffering as the said compensation can only be granted to a person, who is alive on the date of the passing of the Award. Counsel for the respondent thus finds no fault in the findings given by the Tribunal.

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

5. In the accident, the deceased had received serious injuries. Initially, he was admitted in the Hindu Rao Hospital on 14th March, 1996 wherefrom he was referred to Ram Manohar Lohia Hospital where he remained admitted till 27.3.1996. He was admitted again in Tirath Ram Hospital on 7.9.2006. At the time of his admission in Hindu Rao Hospital he was unconscious. Doctors of the RML Hospital had advised him medical rest of three months. The deceased also remained out of work for a period of about one year. Although, indisputably the injured/victim remained under treatment for a period of about one year, but no evidence has been placed on record by the appellant to show that the victim had died due to the injuries sustained by him in the accident. The accident had occurred on 14th March, 1996 while the victim had died after a long gap on 22nd May, 2000. The contention of the counsel for the appellant that since in the affidavit it was stated that the injured remained under continuous treatment,

 

therefore, it should be believed that during the period of treatment the injured had expired. As per the medical record placed on record by the appellant he was admitted in the hospital lastly between 7th August, 1996 till 9th August, 1996 and thereafter no document has been placed on record so as to prove that the victim continued his further treatment due to the said injuries sustained by him. It is also not in dispute that no postmortem of the injured was conducted after his death. It is, therefore, difficult to accept the contention raised by the counsel for the appellant that the injured had died due to the injury sustained by him in the accident after said long gap of about four years period merely on one line statement made in the evidence by way of affidavit that the injured remained under continuous treatment for 4 years. It is only the medical record which could have helped the appellant to prove the exact cause of death of the injured and for his continuous treatment for a period of about 4 years. In any case of the matter, a compensation of Rs. 13,000/- granted by the Tribunal that to after deducting 1/3rd of the income of the deceased towards personal expenses is quite on the lower side. It is a settled legal position that in injury cases such deduction is not allowed, therefore, findings given by the Tribunal to this extent are ex facie illegal. It is proved on record that the deceased remained out of job for a period of about 6 months and further also the Tribunal has held that he would not be doing any work for a period of six months. It is also undeniable fact that during the pendency of the said claim petition the victim had died on 22.5.2000. Although the appellants had not established the continuous treatment of the injured for a period of four years or even any kind of co-relation between the death of the deceased with the injuries sustained by him, but still considering the peculiarity of the facts of the present case, three years period is taken into consideration during which period he got the medical treatment as well as remained out of job. The Apex Court in number of judgments held that in such like cases the compensation cannot be awarded by any arithmetic precision, but sometime the Court has to take the help of the guess work in determining the compensation amount. Without allowing any deduction the compensation for a period of three years would come to Rs. 60,372/- and, therefore, the loss of income as determined by the Tribunal is raised from 13,000/- to Rs. 60,372/-. No compensation has been awarded towards special diet and conveyance. An amount of Rs. 15,000/- is awarded towards special diet and conveyance. Interest awarded by the Tribunal is on the lower side. The same is enhanced. The interest of 5.5% shall be paid w.e.f. filing of the petition till 31st December, 1999 and from 1st January, 2000 till the final payment @ 7.5%. The differential amount shall be paid by the respondent insurance company along with upto date interest.

6. With these directions the matter is remitted back to the tribunal for apportionment of the enhanced compensation amount in favour of the claimants/ appellants.

 