
(2011) 07 DEL CK 0194
In the Delhi High Court
Case No : FAO No. 407 of 2002

Smt. Yashwanti and Others	Vs	APPELLANT
Sh. Ishwar singh and Others		RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2011) 4 TAC 59

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : S.N. Parashar, for the Appellant; L.K. Tyagi, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—The Appellants in this appeal u/s 173 of the Motor Vehicles Act, 1988 seek enhancement of the compensation amount awarded to them by the Motor Accident Claims Tribunal by its judgment and award dated 16th April, 2002 passed in Claim Petition No. 134/96.

2. The facts relevant for the decision of the present appeal are that one Rajender Prasad Chauhan died in a road accident on 16.12.1995, leaving behind his widow and three children. The deceased was employed in Government Co-Ed. Secondary School, Barwala, Delhi and was earning Rs. 7,346/- per month. A claim petition u/s 166 of Motor Vehicles Act, 1988 was filed by his aforesaid legal representatives claiming a sum of Rs. 10,00,000/- by way of compensation for his untimely demise. The learned Claims Tribunal after appraisal of the evidence on record including the pay certificates produced from the school, Exhibit PW1/A and Exhibit P1, showing his income as Rs. 7,346/- per month, proceeded to calculate the compensation to be awarded to the Appellants on the basis of the said income. The Tribunal then went on to state that if the future increments were taken into consideration, the monthly income of the deceased could be roughly taken to be Rs. 8,000/- per month and that monthly dependency could be calculated by taking two-third (2/3rd) of this amount. The Tribunal, thus,

calculated the monthly dependency of the Appellants to be Rs. 5,334/- and proceeded to capitalise the annual dependency by a multiplier of 11, thereby arriving at a figure of Rs. 7,04,088/-. To this, the conventional sum of Rs. 15,000/- was added towards the loss of consortium and loss of estate, and the Appellants were held entitled to receive in all a sum of Rs. 7,19,088/- alongwith the interest at the rate of 9% per annum from the date of filing of the petition till the realization of the award.

3. Aggrieved by the aforesaid computation of compensation by the learned Tribunal, the present appeal has been preferred by the Appellants. Mr. S.N. Parashar, the learned Counsel for the Appellants, has assailed the findings of the Tribunal principally on the following grounds:

(i) The learned Tribunal failed to take into account the future prospects of the deceased while computing the income of the deceased;

(ii) The learned Tribunal erred in deducting one-third (1/3rd) of the income of the deceased towards his personal expenses and maintenance instead of one-fourth (1/4th), which was the permissible deduction;

(iii) The learned Tribunal erred in capitalising the multiplicand constituting the loss of dependency of the Appellants with the multiplier of 11 instead of the multiplier of 15 as laid down in the II Schedule to the Act; and

(iv) The learned Tribunal erred in not awarding any amount whatsoever under the head of loss of love and affection of the deceased.

4. Mr. L.K. Tyagi, the learned Counsel for the Respondent No. 2 - Insurance Company, on the other hand, sought to support the award by contending that the future prospects of the deceased had been taken into account by the learned Tribunal, in that, the Tribunal had by the process of adding the future increments to the salary of the deceased on the date of the accident arrived at the figure of Rs. 8,000/- per month. Mr. Tyagi could not, however, justify the deduction of one-third (1/3rd) of the income of the deceased towards his personal expenses and maintenance. As regards the multiplier also, Mr. Tyagi could not deny that the appropriate multiplier for the age group of victims between 41 years and 45 years is the multiplier of 14 in consonance with the judgment of the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, while it was 15 as per the II Schedule to the Motor Vehicles Act, 1988.

5. In the case of Smt. Sarla Verma (supra), the Hon''ble Supreme Court has laid down certain guidelines to be followed by Courts and Tribunals while computing the income of the deceased for the purpose of assessing the loss of dependency of his legal representatives. The guidelines with regard to addition to income for future prospects have been enunciated as under:

In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income

was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years.

6. Clearly, in view of the aforesaid dicta laid down by the Hon'ble Supreme Court, the monthly income of the deceased needs to be re-computed by making an addition of 30% of actual income to the actual salary income of the deceased towards future prospects, the deceased being in the age group of 41-45 years. The salary certificate of the deceased shows that his income was not in the taxable range, and thus, after the addition of 30% of actual salary to his salary as reflected in the salary certificate, the income of the deceased for the purpose of computation of loss of dependency of the Appellants works out to Rs. 7,346/- [actual salary] + Rs. 2,204/- [30% of his income] = Rs. 9,550/- per month.

7. As regards the deduction to be made towards personal expenses and maintenance of the deceased, the Hon'ble Supreme Court in the case of Smt. Sarla Verma (supra) has standardised the same by expressing the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceeds six. The dependant family members in the present case being four in number, deduction of one-fourth (1/4th) of the income of the deceased is warranted, which comes to Rs. 2,387.50 per month. The loss of dependency of the Appellants, thus, works out to Rs. 7,162.50 per month, that is, Rs. 85,950/- per annum.

8. Adverting next to the aspect of the multiplier to be adopted for augmenting the aforesaid multiplicand, the deceased was admittedly 45 years of age. He, thus, fell in the age-group of victims between 41 to 45 years of age. For the said age-group, in consonance with the judgment in the case of Sarla Verma (supra), the appropriate multiplier would be the multiplier of 14, though in accordance with the II Schedule, the appropriate multiplier is set out as that of 15. Adopting the multiplier of 14, the loss of dependency of the Appellants comes to Rs. 85,950/- X 14 = Rs. 12,03,300/- (Rupees twelve lakhs three thousands and three hundred only).

9. The learned Tribunal has awarded a sum of Rs. 15,000/- towards the loss of estate and the loss of consortium but no amount whatsoever has been awarded for the loss of love and affection. Accordingly, a sum of Rs. 5,000/- towards funeral expenses and last rites of the deceased, and a further sum of Rs. 5,000/- towards the loss of love and affection of the deceased are awarded to the Appellants, that is, in all a sum of Rs. 12,28,300/- per month. Interest @ 7.5%

p.a. is awarded on the enhanced amount of compensation from the date of the institution of the petition till its realization.

10. The award amount as enhanced alongwith the interest thereon shall be paid to the Appellants by the Insurance Company within four weeks from today.

11. The appeal is allowed in the above terms.

12. Records of the Motor Accident Claims Tribunal be sent back to the concerned Tribunal.