
(2010) 12 DEL CK 0231

In the Delhi High Court

Case No : MAC. APP. No. 482 of 2007

Sohan Thakur and Shobha Sharma

APPELLANT

Vs

Anil Kumar and Another

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2011) ACJ 2484 : (2011) 1 AD 195

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : D.D. Singh and Navdeep Singh, for the Appellant; Bijender Singh, for Respondent Nos. 1 and 2, Ram Ashray and S.L. Gupta for Respondent NIC, for the Respondent

Final Decision : Disposed Off

Judgement

Reva Khetrapal, J.—By way of this judgment it is proposed to dispose of two appeals arising under the Motor Vehicles Act, 1988 (for short "the Act") viz., MAC App. No. 482/2007 Sh. Sohan Thakur v. Anil Kumar and Ors. and MAC App. No. 483/2007 Smt. Shobha Sharma v. Anil Kumar and Ors. Both the appeal arises out of the same judgment and award dated 2nd April, 2007 relating to a motor vehicular accident which had taken place on 2nd December, 2002 within the jurisdiction of police station Sadar Rajpura, Punjab.

2. The facts relevant for the disposal of both the appeals are as follows: One Kuldeep Sharma along with one Kanti Patel was going for official work to Ludhiana in car bearing No. DL-7-C-7197. The car was being driven by Sohan Thakur, the Appellant in MAC App. No. 482/2007. At about 4.20 p.m. when they reached the G.T. Road, near Surindra Factory, Ghagar, suddenly a truck bearing No. PAT-5911, driven by the Respondent No. 1 rashly and negligently, took a U-turn from the Rajpura side and appeared in front of the car. The car driver applied the brakes but could not avoid the accident which ensued. The car struck the back side of the truck resulting in the instantaneous death of Kanti Patel, who was the occupant of the first seat. The occupant of the back seat, Kuldeep

Sharma, suffered grievous injuries and remained under treatment till he ultimately died on 7th February, 2003.

3. Two claim petitions were instituted, one by the driver of the car-Sohan Thakur, the Appellant in MAC App. No. 482/2007 and the other by the legal representatives of the deceased Kuldeep Sharma, being MAC App. No. 483/2007. In the written statements filed by the driver, owner and insurer of the offending truck, the factum of accident was categorically denied, and consequently the liability to pay compensation by the Respondent No. 3, Insurance Company. Both the cases proceeded to trial and after considering the evidence adduced on record, the Motor Accident Claims Tribunal held that it was clear from the evidence that the car driver had run into the truck which had almost crossed by taking a U-turn and thus, the car driver was also negligent and blameworthy. The liability of the car driver was assessed at 20% while that of the truck driver was fixed at 80%. Thus, the learned Motor Accident Claims Tribunal while fixing the quantum of compensation payable to the Appellant, Sohan Thakur, after assessing him to be entitled to a total compensation of ` 1,07,332/- deducted 20% towards contributory negligence and held the net compensation payable to be in the sum of ` 85,866/- with interest @ 7.5 % p.a. from the date of the filing of the petition till the date of award.

4. Likewise, in the case of the compensation awarded to the legal representatives of the deceased Kuldeep Sharma the net compensation payable to the claimants was held to be ` 8,59,410/- with interest @ 7.5% p.a. after deducting 20% of the amount on account of the contributory negligence of the driver of the car.

5. Aggrieved by the aforesaid award, the Appellants have filed the present appeals, both in respect of the compensation awarded to the Appellant Sohan Thakur and the compensation awarded to the legal representatives of the deceased Kuldeep Sharma.

6. The learned Counsel for the Appellants, Mr. D.D. Singh, forcefully contended that the Appellant Sohan Thakur was not at all responsible for the accident and the accident occurred on account of the sole negligence of the offending truck. Accordingly, he contended that the deduction of 20% of the compensation towards the contributory negligence of the car driver was unwarranted and unjustified, particularly in the case of Kuldeep Sharma, who was only a passenger in the car. Heavy reliance was placed by him upon the site plan Ex.PW4/1 to contend that the driver of the car keeping in view the fact that the truck suddenly appeared in front of the car had been incapable of avoiding the accident.

7. The learned Counsel for the Respondents, on the other, sought to support the award by contending that the Motor Accident Claims Tribunal had rightly assessed the Appellant Sohan Thakur to be guilty of contributory negligence.

8. A bare glance at the site plan shows that the car was coming on the straight road, i.e. the G.T. Road from Ambala towards Raj Pura. This being a Highway, the

driver of the car could not have foreseen that a truck would suddenly appear in front of the car and thus could not be expected to apply sudden brakes, more so, when he was on a Highway and a vehicle on a Highway ordinarily proceeds on a faster pace than a vehicle in a densely populated area and is liable to turn turtle on the application of sudden brakes. This being so, in my view, it was incumbent upon the truck driver to have waited at the crossing before taking a U-turn. Apparently, the truck driver presumed that any vehicle coming from the opposite direction would stop in order to enable the truck to pass first. This kind of belief is often entertained by the drivers of trucks and other heavy vehicles, who think that they have the right of way by virtue of the fact that they are heavy vehicles, resulting in disastrous accidents and tragic deaths. Hence, in my view, this is not a case where apportionment of liability was justified and it is the truck driver alone who should have been held wholly responsible for having caused the accident resulting in the death of two persons, one at the spot and the other after considerable sufferance, apart from injuries to the Appellant.

9. It deserves to be noticed at this juncture that in the written statements filed by the driver and owner of the truck, the involvement of the truck in the accident was disputed. Thus, obviously there was no plea of contributory negligence. Then again, PW4 Sohal Lal Thakur, the driver of the car, though he appeared in the witness box to testify the manner in which the accident took place, not even a suggestion was put to the witness to the effect that his negligence had any role to play in the accident. Accordingly, the finding of the Tribunal apportioning 20% liability on the Appellant Sohan Lal thakur is without justification and cannot be sustained.

10. As regards the quantum of compensation awarded by the Tribunal, the grievance of the Appellant is that the Tribunal did not take into consideration the future prospects of the deceased Kuldeep Sharma while computing his income for the purpose of calculation of compensation awardable to his legal representatives. The only other grievance is that a very meager amount was awarded towards non-pecuniary damages.

11. As regards the future prospects of the deceased, the learned Tribunal has observed that there is no evidence on record to establish his future prospects. Even the qualification of the deceased is not forthcoming on record to assess the chances of future prospects. I find from the testimony of PW5, Sh. Gaurav Jain, the employer of the deceased, that the learned Tribunal was right in stating that the qualification of the deceased was not forthcoming on record. A pointed question was put in cross-examination to PW5, Sh. Gaurav Jain, as to the qualification of the deceased, to which the witness replied that he could not tell his qualifications. This being so and the deceased being 53 years of age at the time of the accident, the Tribunal rightly concluded that the income of the deceased could only be taken at ` 5300/- per month as testified by his employer. Thus calculated, the loss of dependency works out to ` 6,99,000/-and after deducting 1/3rd therefrom towards the personal expenses of the deceased, it

comes to ` 4,66,000/-. Apart from the amount awarded by the Tribunal towards the loss of dependency, the Appellants, as legal representatives of the deceased, were also awarded a sum of ` 5,87,782/- towards his medical expenses.

12. As regards the non-pecuniary losses, a sum of Rs. 5000/- was awarded for the transportation of the body and the funeral expenses, which appears to be on the lower side and is accordingly enhanced to ` 15,000/-. The Appellants have also been held entitled to a sum of ` 5000/- towards loss of estate and ` 5000/- towards loss of consortium. The award for loss of consortium being on the lower side, a sum of ` 10,000/- is awarded towards loss of consortium. Thus, the total compensation payable to the Appellants in MAC App. No. 483/2007 works out to ` 10,89,000/- which is rounded off to ` 10,90,000/-.

13. As regards the quantum of compensation awarded to the Appellant Sohan Thakur, the learned Counsel for the said Appellant contended that the award amount deserves to be enhanced, keeping in view the fact that the Tribunal after going through the evidence of the Appellant, who appeared in the witness box as PW4, arrived at the conclusion that there was nothing on record to discredit his evidence with regard to his employment and income. I find from the testimony of PW4, Sohan Lal Thakur that he stated that he had sustained fractures and was operated upon at Jain Hospital, where he remained for about one month. This fact is corroborated by the discharge summary and bills, Ex.PW4/3 to Ex.PW4/24. The witness also deposed that at the time of the accident he was employed with Sidharth Impex India at Nai Sarak and was drawing a salary of ` 3500/- besides overtime of ` 500/- per month, and due to the injuries sustained by him, he could not join his duties for six months. He also stated that he had spent a sum of ` 1,00,000/- towards treatment, special diet and conveyance and had undergone considerable pain and suffering.

14. The Tribunal after considering the evidence of the Appellant held him to be entitled for compensation under the following heads:

Rs. 1. Pain & Suffering 50,000/- 2. Actual medical expenses 32,732/- 3. Special diet and conveyance 10,000/- 4. Loss of leave/income for a period of three months 9,600/- 5. Reasonable expenses on attendant 5,000/- TOTAL 1,07,332/-

15. I find no infirmity in the compensation awarded by the Tribunal under the Head numbers 1,2,3 and 5. However, the compensation awarded under Head No. 4 i.e. "loss of leave/income" is inadequate keeping in view the fact that the injured was a driver and there appears to be no reason to disbelieve his statement made on oath that he could not drive for a period of six months. For this period, therefore, the loss of income works out to ` 21,000/-, i.e., ` 3,500 x 6. Thus, the total amount of compensation payable to the Appellant Sohan Thakur works out to ` 1,17,832/-, which is rounded off to 1,18,000/-.

16. While granting relief to the Appellants in both the cases, the Tribunal has awarded interest @ 7.5% p.a. from the date of the petition till the date of the award (excepting for the periods not specifically allowed) and future interest @

9% after one month of the award till realization. The rate of interest awarded appears to be just and proper and requires no interference.

17. The award in MAC App. No. 482/2007 and 483/2007 is accordingly modified to the extent stated above. The Respondent No. 3 being the insurer of the offending vehicle is directed to make the payment of the compensation awarded by this Court within one month from the date of passing of this order along with the interest thereon.

18. Both the appeals stand disposed of accordingly.

19. The lower Court records of this case be sent back to Motor Accident Claims Tribunal concerned immediately. REVA KHETRAPAL (JUDGE) December 6, 2010 sk