

(2007) 05 DEL CK 0241

In the Delhi High Court

Case No : M.A.C. Appeal No"s. 354-57 of 2005

Surjawati and Others

APPELLANT

Vs

Ajay Saini and Others

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Citation : (2008) ACJ 2078

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

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

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—On 20.4.2002, Mam Chand died in a road accident involving bus No. DL 1P-B 1088. He was survived by his wife and three sons.

2. Dependants filed a claim petition claiming a compensation of Rs. 10,00,000 on account of death of deceased in the said road accident.

3. After holding the driver of offending bus guilty of rash and negligent driving, learned Tribunal awarded compensation in a sum of Rs. 3,21,840 to the dependants. Break-up of the compensation is as follows:

Loss of dependency 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, dependants-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, Exh. PW3/A; a receipt dated 15.6.1985 issued by employer of the deceased, Exh. PW3/B and a bill dated 3.4.1991 issued by the deceased to a customer, Exh. PW3/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 the 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 accident. Deducting 1/3rd for the personal spending of the deceased, loss of dependency 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 dependency 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 towards funeral expenses, the 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 dependency, 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 dependency, 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 the deceased at the time of the accident on the basis of post-mortem report, Exh. P3. Certificate of insurance issued by LIC (Mark A) was placed on record by the dependants which records date of birth of deceased as 25.10.1959. Date of accident is 20.4.2002. Thus, age of the deceased at the time of the accident was 43 years. In my opinion, the learned Tribunal erred in relying upon post-mortem report when there was clear evidence showing the age of the deceased at the time of the accident. Thus, I had taken 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 the 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 any way establish the income of the deceased at the time of the accident.

14. However, the 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 shows that to neutralise 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 were 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 per cent in the minimum wages. Similarly, the minimum wages of skilled labourers as on 1.1.1990 were 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 per cent 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 $[(Rs. 3,100 + Rs. 6,200) \div 2]$.

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 dependency 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 Claims 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 and 45 years. Thus, Tribunal ought to have applied multiplier of 15. He relied upon two decisions of the Supreme Court in *Savita Sharma v. Union of India/Chandigarh Administration* 2008 ACJ 2032 (SC) and *M. Lakshmi v. E.V. Kumar* 2008 ACJ 2034 (SC), 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 the case of a deceased aged 53 years. In M. Lakshmi's case (supra), the Supreme Court applied a multiplier of 18 in case of deceased aged 26 years. But, both decisions, by a Bench of two 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-Judge Bench 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:

(18) 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. 3,000. Total should be Rs. $3,000 \times 15 =$ Rs. 45,000 but the same is worked out at Rs. 60,000. Similarly, in the item No. 2 the multiplier is 16 and the annual income is Rs. 9,000; the total should have been Rs. 1,44,000 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...

21. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising 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 the dependants and other attendant circumstances. Second 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 a 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, Apex 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; and

(6) The Managing Director, TNSTC Vs. Sripriya and Others, 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 dependency comes to Rs. $3,100 \times 12 \times 11 =$ Rs. 4,09,200.

25. Tribunal has awarded Rs. 2,94,840 under the head "loss of dependency". Thus, compensation under this head is increased by a further sum of Rs. 1,14,360.

26. The 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 at the rate of 6 per cent per annum from date of claim petition till date of realisation.

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 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.

No costs.

L.C.R. be returned.