
(2023) 03 DEL CK 0234
In the Delhi High Court
Case No : MAC.APP. No. 411 Of 2015

Sushila Devi & Ors

APPELLANT

Vs

Sandeep Kumar (United India Insurance Co. Ltd.)

RESPONDENT

Date of Decision : 29-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337
Motor Vehicles Act, 1988 — Section 166, 173
Income Tax Act, 1961 — Section 80, 80U, 139(5)

Citation : (2023) 03 DEL CK 0234

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : S.N. Parashar, Ravi Sabharwal

Final Decision : Allowed

Judgement

Gaurang Kanth, J

1. The present appeal emanates from the judgment dated 12.01.2015 ("Impugned Award") passed by the learned Presiding Officer, Motor Accidents Claims Tribunal: Dwarka Courts: New Delhi in MACP No. 27/2013 titled as Smt. Sushila Devi and Ors. v. Sh. Sandeep Kumar and Ors. whereby the Petitioners/Claimants were awarded an amount of Rs.17,49,491/- as compensation with an interest @7.5% per annum, from the date of filing the petition, till realization is made by Respondent No.3/Insurance Company. Further a deduction of 20% was also made towards contributory negligence in the awarded amount. The Appellants by way of the present appeal are seeking enhancement of the compensation awarded by the learned Claims Tribunal.

FACTS GERMANE TO THE PRESENT APPEAL ARE HEREUNDER:

2. It is the case of the Appellants that on 22.07.2012, at around 8.10 PM, Sh. Subhash Chander (deceased) was driving a motorcycle bearing no. DL-9S-J-5202 which collided with a DTC bus bearing no. DL-1P-B-5549 ("Offending Vehicle"). It

is further the case of the Appellants that the offending vehicle was parked in the middle of the road without any signal or light indicator. The deceased before the collision with the offending vehicle had just crossed the underpass near Palam Airport and moved towards IOC red light, where the offending vehicle was standing in the middle of the road. As a result of collision, the deceased sustained fatal injuries and subsequently was taken to Mata Chanan Devi Hospital, Janakpuri, New Delhi. Pertinently, the injuries suffered by the deceased proved to be fatal and he expired on 23.07.2012.

3. Consequently, on 22.07.2012, an F.I.R. No. 173/2012 was registered with Police Station Delhi Cantt. under Sections 279 and 337 of IPC and a charge sheet was also filed under Sections 279 and 304-A of IPC against Respondent No.1.

4. Subsequently, the Appellants/Claimants preferred an application under Section 166 of the Motor Vehicles Act, 1988 ("the Act") praying for compensation of Rs. 50,00,000/- (Fifty Lakhs Only) on various counts. It is pertinent to note here that at the time of the accident, Sh. Subhash Chander (deceased) as per his ration card Ex. PW1/3 was aged about 54 years. The deceased was employed as a Government Contractor within Delhi and National Capital Region.

5. Respondent No. 3 filed its written statement stating that the offending vehicle was insured in the name of Respondent No.2 vide Policy bearing no. 0411003111P113414635 valid from 03.03.2012 to 02.03.2013. Further, Respondent No.3 stated that the deceased was himself a tortfeasor and the alleged incident took place due to the sole negligence of the deceased.

6. In support of the claim petition, the Appellants/Claimants examined four witnesses. The Appellants examined Appellant No.1 as PW-I, Shri Sunil Kumar/ PW-2 as eye witness, PW-3/Shri Vijay Kumar from the office of Executive Engineer, Delhi Aviation Division and PW-4 Shri Joginder Singh from the Income Tax Office. However, the Insurer/Respondent No.3 have not examined any witnesses.

7. Learned Claims Tribunal decided the issues in favour of the Claimants/Appellants by holding that they are entitled for a total compensation of Rs. 17,49,491/- with an interest @7.5% per annum, from the date of filing the petition, till its realization. Further a deduction of 20% towards contributory negligence was also made in the awarded amount. The compensation awarded by learned Claims Tribunal is mentioned as under:-

S.

No.

Head

Compensation awarded

Pecuniary Damages

1.

Loss of Dependency (Rs. 1,37,681 X11))

Rs. 15,14,491/-

2.

Funeral charges

Rs. 25,000/-

3.

Loss of estate

Rs. 10,000/-

4.

Loss of Consortium

Rs. 1,00,000 /-

Non- Pecuniary Damages

5.

Loss of love and affection etc.,

Rs.1,00,000 /-

Total Compensation awarded

Rs. 17,49,491/-

8. Aggrieved by the order of the learned Claims Tribunal, the Appellants herein filed the present appeal under Section 173 of the Act, for enhancement of compensation award by the learned Claims Tribunal.

SUBMISSIONS OF THE APPELLANTS/CLAIMANTS

9. Mr. S.N Parashar, learned counsel for the Appellants submitted that the learned Claims Tribunal erred in awarding a compensation of Rs.17,49,491/- as against the claimed amount of Rs.50,00,000/-.

10. Learned counsel for the Appellants further submitted that the accident which resulted in the death of the deceased/Sh. Subhash Chander was caused due to the sole negligence of Respondent No.1. He further submits that Respondent No.1 left his vehicle unattended in the middle of the road at night without any signal, reflector or indicator. Further, he submitted that the learned Claims Tribunal erred in holding that the deceased was guilty of Contributory Negligence to the extent of 20%. He further submitted that the respondents have not led any evidence to suggest that the deceased was negligent at the time of the accident.

11. Mr. S.N. Parashar, learned counsel for the Appellant, further submitted that the learned Claims Tribunal erred in taking the annual income of the deceased as Rs. 1,59,630/-. He submitted that PW-4/Sh. Joginder Singh, Tax Assistant has proved two ITRs of the deceased Ex. PW4/1 (Colly), for the assessment year 2012-2013. As per the original ITR, the annual income of the deceased is shown as Rs. 2,59,627/- and as per the revised return, the annual income of the deceased is shown as Rs. 4,14,606/-. It is his submission that the learned Claims Tribunal wrongly deducted the permissible savings of Rs. 1,00,000/- allowed under Chapter VI A (Section 80 to 80 U) of the Income Tax Act while calculating the income of the deceased.

12. Learned counsel for the Appellant further submitted that the deceased left behind seven legal heirs as his dependent which included his mother who unfortunately died during the pendency of the present petition. Therefore, the learned Claims Tribunal ought to have made lesser deduction towards personal expenses.

13. With regard to future prospects, it is the contention of the learned counsel for the Appellants that the learned Claims Tribunal erred in restricting the future prospects only to the extent of 15% and it should have been considered at a much higher rate. He further submitted that the deceased/Sh. Subhash Chander was not in service but was working as a government contractor with various government agencies. Furthermore, it is also his submission that there was no retirement age for the deceased and the income of the deceased was increasing as is also evident from the ITRs.

14. Learned counsel for the Appellant further submitted that the learned Claims Tribunal failed to consider the Medical Bills placed on record by the Appellant. The accident happened on 22.07.2012 and the deceased succumbed to his injuries on 23.07.2012. After the accident, the deceased was taken to Mata Channan Devi Hospital, Janakpuri, New Delhi and the medical Bills from Mata Channan Devi Hospital, Janakpuri amounting to Rs. 40,575/- was placed on record as Ex. PW1/2. However the learned Claims Tribunal failed to grant any compensation on this head.

15. Lastly, he submitted that learned Claims Tribunal also failed to award compensation towards Loss of filial consortium of Rs. 40,000/- each.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3

16. Per Contra, Mr. Ravi Sabharwal, learned counsel appearing on behalf of Respondent No.3/Insurance Company vehemently argued that the accident of the deceased/Sh. Subhash Chander occurred due to the negligence of the deceased himself. He submitted that the deceased while driving his motorcycle himself hit the stationary bus from back and there was no negligence on part of Respondent No.1.

17. It was further argued by the learned counsel for Respondent No.3 that the

compensation awarded by the learned Claims Tribunal is more than sufficient and hence prayed for the dismissal of the present appeal.

LEGAL ANALYSIS

18. This Court has heard the arguments advanced by the learned counsels for both the parties and perused the documents on record.

19. Before the adjudication of any other issue, it is quintessential to adjudicate on the issue of negligence. It is the contention of the learned counsel for the Appellants that the offending vehicle which was being driven by Respondent No.1 was parked in the middle of the road without any signal or light indicator. On the contrary, learned counsel for Respondent No.3 argued that the accident of the deceased was caused due to the negligence of the deceased as he himself hit the stationary bus from back.

20. Ex. PW-2/A is the evidence of the eye-witness, Sh. Sunil/PW-2, wherein he stated that the accident of the deceased/Subhash Chander was caused due to the rash and negligent parking of Respondent No.1. He further stated that the deceased was his uncle who was returning back after attending a function on his motorcycle. He further stated that when they crossed the underpass near Palam Airport and moved towards IOC red light, he saw a DTC bus bearing No. DL-1P B-5549 in the middle of the road and the deceased was ahead of him. He stated that it was not possible to make out whether the DTC bus was moving or standing as it was in the middle of the road. There was also no indication of any kind put on the bus or road and there was no road lighting. Furthermore, he stated that the deceased tried to avoid the bus on the road but his motorcycle hit the bus which was parked in the middle of the road.

Relevant portion of evidence by way of affidavit of PW2 which is exhibited as Ex. PW2/A is reproduced hereunder:

"1. That I am the eye witness of the incident took place on 22.07.2022 in the above noted case and well conversant with the facts and circumstances of the present case and as such fully competent to swear this affidavit.

2. That on the fateful day of 22.07.2012 along with my wife Smt. Ritu Kumar were coming from Netaji Nagar after attending a family function on our motorcycle bearing No. HR-51-AM-0238 and the deceased who was my uncle was also returning back from the said function on his motorcycle bearing No. DL9S J-5202. When we cross the underpass near Palam Airport and move towards IOC red light, I saw that a DTC bus bearing No. DL-IPB-5549 on the middle of the road and the deceased was ahead of me and it was not possible to make out that the DTC bus was moving or standing as it was in the middle of the road, there was no indication of any kind was put on bus or road and there was no road lighting. I saw that the deceased tried to avoid the bus on the road but his motorcycle hit the bus while avoiding bus was parked in the middle of the road.

3. That the said accident took place due to the rash and negligent parking of the bus by his driver i.e the respondent No.1 in the middle of the road.”

21. From the evidence of PW2 (eye witness), there is no doubt that the accident occurred due to the irresponsible and negligent parking of the offending vehicle by Respondent No.1 in the middle of the road. However, this Court is of the considered opinion that the accident could have been avoided if the deceased could have driven his motorcycle with all due care while crossing the stationary bus. PW-2, who was travelling in another motorcycle behind the deceased, categorically stated in his evidence that he saw a DTC bus on the middle of the road. Hence, if the deceased would have taken proper care, he would have also seen the DTC bus standing in the middle of the road and the unfortunate accident would have been avoided.

22. This Court is also of the opinion that rash and negligent driving does not in every case necessarily mean the excessive speed. Not taking due care while driving the vehicle and in particular overtaking, either stationary or moving vehicle also would amount to rash and negligent driving. Hence, this Court is in complete agreement with the learned Claims Tribunal and the deceased is guilty of contributory negligence to the extent of 20%.

23. With respect to the income of the deceased, it is the contention of the learned counsel for the Appellants that as per the original ITR, the annual income of the deceased is shown as Rs. 2,59,627/- and as per the revised return, the annual income of the deceased is shown as Rs. 4,14,606/-. Further he also contended that both the ITRs which are exhibited as Ex. PW4/1 (Colly) have been proved on record by PW4 and hence the learned Claims Tribunal erred in taking the income of the deceased as Rs.1,59,630/-. Further he also contended that the learned Claims Tribunal wrongly deducted the permissible savings of Rs. 1,00,000/- allowed under Chapter VI A (Section 80 to 80 U) of the Income Tax Act. Relevant part of the evidence of PW4/Sh. Joginder Singh reproduced hereunder:

“PW4: Statement of Shri Joginder Singh, Tax Assistant, Civic Centre, Dr. Shyama Mukherjee Building, Room No.2209, Minto Road, New Delhi.

On S.A.

I am a summoned witness and I have brought summoned record, i.e. Income tax returns of deceased Subhash Chand for the assessment year 2010-11, 2011-12 and 2012-13. There is one original and one revised income tax return for the assessment year 2012-13. True copies of the same are Ex.PW4/I (colly) (objected to as to the mode of proof).

XXXXX by Shri R.P. Mathur, counsel for R3.

The income tax returns for the assessment year 2012-13 is for the period from 01-4-2012 to 31-3-2013 and the date of filing is 16-8-2012. I have no personal knowledge of the summoned record. It is correct that income tax returns for the

assessment year 2012-13 is computer generated. I have myself not generated copy of the same. I have not brought the affidavit of the person who had generated the copies from the computer. I have not brought the profit and loss accounts statement of the same account. It is wrong to suggest that income tax returns for the assessment year 2012-13 is not for the period 01-4-12 to 31-3-13. I am unable to tell what is the TDS refund for the assessment year 2012-13. I have not brought TDS record of assessment year 2012-13. It is correct that I have never dealt with the person whose record I have brought today as I am not competent. It is wrong to suggest that I have brought false computer generated documents to help the petitioner.

(At this stage, learned counsel for petitioner requests to re-examine the witness for certain clarification. Request is allowed.)

Re-examination

Assessment year defined as the year in which the income tax return is being filed and it is filed for the previous financial year. As per record, the income of deceased for the assessment year 2012-13 is Rs.1.59,627/-.

XXXXXX by counsel for R3.

After assessment year 2012-13, no further ITR has been filed. As per record, there is no other income shown in the ITR, i.e. Rental income or any other income. I do not know if there is any other return for the assessment year 2013-14. It is wrong to suggest that I have deposed falsely and behind the documents.”

24. This Court examined both the ITRs. As per the original return, the income was shown as Rs. 2,59,627/- whereas, as per the revised return, the annual income of the deceased was shown as Rs. 4,14,606/-. Section 139(5) of the Incomes Tax Act, 1961 allows the taxpayers to file a revised ITRs if they have made mistakes in the returns which were filed earlier. A revised ITR would substitute the original ITR completely. Thus, once the revised return is filed, it would be considered to be the final ITR of the taxpayer. In the present case, PW-4 deposed that the income of the deceased/Subhash Chander for the assessment year 2012-2013 was Rs. 1,59,627/-. However, it appears that PW-4 has not considered the revised return filed by the deceased. Since the revised return was proved on record as Ex. PW4/1 (Colly), the learned Claims Tribunal ought to have taken the income of the deceased as per the revised return for the assessment year 2012-2013, i.e. Rs. 4,14,606/-.

25. Therefore, the Annual Income of the deceased as per the revised ITR was Rs. 4,14,606/- and the tax liability was Rs. 13,865/-. Hence for the purpose of computation of Claim, the annual income of the deceased is taken as Annual Income minus his Tax Liability, i.e. Rs. 4,00,741/- (Rs.4.14,606/- - Rs.13,865/-).

26. The Hon’ble Supreme Court in the matter of Sarla Verma v. DTC, reported as (2009) 6 SCC 121 has established the golden principles in considering

compensation in cases of death. Relevant part of the judgment at paras 18- 19 is reproduced hereunder:

"18. The criteria which are to be taken into consideration for assessing compensation in the case of death are: (i) the age of the deceased at the time of his death; (ii) the number of dependents left behind by the deceased; and (iii) the income of the deceased at the time of his death.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- (i) additions/deductions to be made for arriving at the income;
- (ii) the deduction to be made towards the personal living expenses of the deceased; and
- (iii) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardized, there will be uniformity and consistency in these decisions. There will be lesser need for detailed evidence. It will be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

"Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a Table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said Table with reference to the age of the deceased."

27. Moving forward with the issue of future prospects, the Constitution Bench of the Hon'ble Supreme Court in the matter of National Insurance Company Ltd. v. Pranay Sethi reported as (2017) 16 SCC 680, held that Future prospects are to be awarded on the basis of:

- (i) The nature of the deceased's employment; and
- (ii) The age of the deceased.

28. In the present case, the age of the deceased was 54 years and was working as a Government Contractor within Delhi and National Capital Region. Relying on Para 59.4 of Pranay Sethi (supra), while determining the income, an addition of 10% of actual salary to the income of the deceased towards future prospects should be made, where the deceased is self-employed and was between the age of 50 and 60 years.

29. At the time of the death of the deceased, he was survived by 7 dependents, i.e. wife, mother, three sons and two daughters. However, during the pendency of the proceedings before the learned Claims Tribunal, the mother of the deceased expired. Hence while calculating the deductions towards the personal expenses, the number of dependents at the time of the death of the deceased is to be considered. As per the dicta of Hon'ble Supreme Court in Sarla Verma (supra), since the number of dependents were 7, the deductions towards the personal expenses would be 1/5.

30. The accident happened on 22.07.2012 and the deceased succumbed to his injuries on 23.07.2012. After the accident, the deceased was taken to Mata Channan Devi Hospital, Janakpuri, New Delhi and the Appellants proved the medical Bills from Mata Channan Devi Hospital, Janakpuri amounting to Rs. 40,575/- as Ex. PW1/2. Hence the Appellants are entitled to Rs.40,575/- towards the actual medical expenses incurred for the treatment of the deceased.

31. During the course of the arguments, the last issue raised by the learned counsel for the Appellants was regarding consortium. In view of the law laid down by the Hon'ble Supreme Court in Pranay Sethi (Supra), the conventional heads, namely, 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses', amount of compensation is fixed as Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. In view of the decision in United India Insurance Company Limited Vs Satinder Kaur Alias Satwinder Kaur and Ors. (2021) 11 SCC 780, no compensation is to be granted under the head 'Loss of Love and Affection'.

32. In light of the above discussion, the claimants are awarded compensation as follows:

S.No.

Head

Compensation Awarded

1.

Income

Rs. 4,00,741/- p.a

2.

Deduction towards personal expenditure

1/5 th of Rs. 4,00,741/- = Rs. 80,148.2/-

3.

Future prospects

10%

4.

Multiplicand

Rs.4,00,741/- - Rs.80,148.2/- = Rs. 3,20,592.8/- Rs. 3,20,592.8/- + 10% of Rs.3,20,592.8/- = Rs. 3,52,652.08/-

5.

Multiplier (As per Sarla Verma)

11

6.

Loss of dependency (A)

Rs.38,79.172.88/-

(Rs.3,52,652.08X11)

7.

Funeral expenses (B)

Rs.16500/-

8.

Loss of estate

Rs.16,500/-

9.

Medical expenses incurred for the treatment of deceased

Rs.40,575/-

10.

Loss of consortium

(a) spousal consortium 44,000/-

(b) parental consortium 44,000/- X 5

Rs.2,64,000/-

Total Compensation awarded

Rs. 42,16,747.88/-

33. In view of the foregoing reasons and discussions, the compensation is increased from Rs. 17,49,491/- to Rs. 42,16,747.88/-. However, 20% of the total awarded compensation is to be deducted as this is a case of contributory negligence. Therefore, Rs. 8,43,349.57/- is to be deducted from the awarded compensation towards the contributory negligence. Hence the compensation, after the deduction of contributory negligence would be Rs.33,73,398.31/- (Rs. 42,16,747.88/- - 20% of Rs.42,16,747.88/-). Further, it is also made clear that the rate of interest as fixed by the learned Claims Tribunal, i.e. 7.5 % is also maintained.

34. Respondent No.3 is directed to deposit the enhanced amount with 7.5% interest from the date of filing of the present Appeal till the date of deposit within 4 weeks from today. Upon deposit of the said amount, the Registry is directed to release the said amount to the Appellants in terms of the Award passed by the learned Claims Tribunal. The statutory deposit with interest accrued thereon, if any, shall be released to the Appellants.

35. The present appeal is allowed and disposed of in the above terms. No order as to costs.