(2012) 04 DEL CK 0079

In the Delhi High Court

Case No : MAC. App. 829 of 2010 and 254 of 2012

Tata AIG General Insurance Co. Ltd. APPELLANT

Vs

Ram Babu and Others
 Ram Babu and Others Vs Tata AIG General Insurance RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2012) 04 DEL CK 0079

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : K.L. Nandwani in MAC. app. 829/2010 and Ms. Nikita Sharma in MAC. app. 254/2012, for the Appellant; Nikita Sharma, Advocate for the Respondents No. 1 and 2 in MAC. App. 829/2010 and Mr. K.L. Nandwani, Advocate in MAC. App. 254/2012, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—These Cross Appeals arise out of a judgment dated 01.09.2010 passed in Suit No. 579/2010 whereby a compensation of Rs. 5,42,334/- was awarded for the death of Rahul, a bachelor aged 20 years in a motor accident which took place on 11.08.2007. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was claimed that the accident was caused on account of rash and negligent driving of the offending vehicle DL-3C-AD-4281 by Savita Verma (Respondent No. 3 herein). It was averred that the deceased was in a Private service and was earning Rs. 5,000/- per month.

2. The Claims Tribunal held that the accident was caused on account of rash and negligent driving of the offending car by Respondent No. 3. It further held that Respondents No. 1 and 2 failed to established the deceased''s salary to be Rs. 5,000/- per month. It, therefore, took the help of Minimum Wages fixed under the Minimum Wages Act by the Govt. of NCT of Delhi and added 50% towards inflation to compute the loss of dependency.

3. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) It was not proved that the accident was caused on account of rash and negligent driving of the car by Respondent No. 3.

(ii) 50% addition on account of inflation was not permissible in view of the judgment of this Court in Dhaneshwari & Another v. Tajeshwar Singh & Others, MAC. APP 997/2011 decided on 19.3.2012.

(iii) The compensation awarded towards Funeral Expenses and towards Loss of Love & Affection is on the higher side.

4. It is urged by the learned Counsel for the Respondents/Claimants that the Respondents No. 1 and 2 spent a sum of Rs. 2,09,379/- towards the deceased''s treatment in Fortis Hospital, Vasant Kunj. The same, however, escaped the attention of the Claims Tribunal.

5. On the issue of negligence, the Claims Tribunal observed as under:-

11. This is a petition u/s 166 of the Act wherein the petitioner is under the duty to prove rashness and negligence of the driver in causing the accident. However, the rigid rules of evidence and procedure to prove the culpability of the driver in causing the accident beyond all shadow of doubt, as required in criminal cases, is not required to be followed while deciding the claim petition under the Act because the proceedings under the Motor Vehicles Act is simply an enquiry and not a trial as has been held in Kaushnumma Begum and others v. New India Assurance Co. Ltd., 2001 ACJ 421 SC.

12. The Hon''ble High Court of Delhi in a case titled as National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, had held that where a petitioner files the certified copy of the criminal record showing completion of investigation, issuance of charge-sheet, certified copy of the FIR, all these documents are a sufficient proof to come to the conclusion that the driver was negligent. In the present case, the petitioner has placed on record the copy of post mortem report Ex. PW1/3, copy of FIR, copy of charge-sheet, copy of site plan, seizure memos, arrest memo, copy of mechanical inspection report.

13. Therefore, it has been amply established that the offending vehicle No. DL-3C-AD-4281 was very much involved in the road accident which ultimately led to the death of the deceased Rahul.

14. Accordingly, I am of the considered opinion that the petitioner has succeeded in establishing that R-1/driver was rash and negligent while driving the offending vehicle on the day of accident which was admittedly owned by herself and insured with R-2.

6. It is well settled that when the Claimants approach the Claims Tribunal for the grant of compensation u/s 166 of the Motor Vehicles Act, the Claimants are required to establish negligence of the driver o7r the owner of the vehicle as

grant of compensation is based on fault liability. The Oriental Insurance Company Limited Vs. Meena Variyal and Others,

7. At the same time, it has to be borne in mind that proof of negligence in a Claim Petition u/s 166 of the Motor Vehicles Act is different from the proof of negligence required in a criminal case u/s 304-A of the Indian Penal Code. For conviction of an accused u/s 304-A IPC, the negligence must be proved beyond reasonable doubt. In a Claim Petition, it is sufficient to prove negligence on the touchstone of preponderance of probability. A reference may be made to a latest decision of the Supreme Court in Kusum Lata and Others Vs. Satbir and Others, where relying on Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, , the Supreme Court observed as under:-

...In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

8. Respondents No. 1 and 2 produced eye witness PW-2 Surjan Kumar to prove the negligence. Unfortunately, the Claims Tribunal preferred not to deal with the evidence of the eye witness and instead held that registration of a criminal case was sufficient proof of the negligence. As there can also be a possibility of registration of a false case; thus simply on account of registration of a criminal case an inference of negligence on the part of driver or owner against whom a Petition u/s 166 of the Act has been filed cannot be drawn.

9. Turning to the facts of this case PW-2 Surjan Kumar testified that on 11.08.2007 at about 12:30 P.M. he saw two boys going on a motorcycle. When they reached at Aruna Asaf Ali Road near Telephone Exchange one car bearing registration No. DL-3C-AD-4281, which was driven by a lady, took a turn towards the Telephone Exchange and hit the motorcycle.

10. The certified copy of the Site Plan prepared in FIR No. 496/2007 was placed on record of the Claims Tribunal. The Site Plan shows that the car entered the carriageway for the vehicles coming from the opposite direction when this accident occurred. Thus, evidence of the eye witness is supported by the Site Plan prepared by the IO of the case. There is no rebuttal to this evidence as Savita Verma, Respondent No. 3 preferred not to enter the witness box. On the basis of material produced on record it was proved that the accident was caused on account of rash and negligent driving of the offending car by Respondent No. 3.

11. With regard to the deceased''s income, Ram Babu, the deceased''s father testified that his son had studied upto 10th standard. He was doing a Private job and was earning about Rs. 5,000/- per month. The details of the private job were not given by Ram Babu. Although, he denied the suggestion that Rahul was not

earning Rs. 5,000/- per month, it was proved on record that the deceased had failed in Matriculation; the Claims Tribunal was justified in taking the Minimum Wages of a Non-Matriculate for computation of the loss of dependency. However, addition of 50% on account of inflation was not justified.

12. In Dhaneshwari & Another v. Tajeshwar Singh & Others, MAC. APP 997/2011 decided on 19.3.2012, after noticing the Judgments of this Court in Smt. Anari Devi Vs. Shri Tilak Raj and Another, ; National Insurance Co. Ltd. Vs. Pooja and Others, Om Kumari & Ors. v. Shish Pal & Ors, 140 (2007) DLT 62; Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008; New India Assurance Co. Ld. v. Vijay Singh MAC APP. 280/2008 decided on 09.05.2008; Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors. MAC APP. 286/2011 decided on 06.01.2012; Smt. Gulabeeya Devi v. Mehboob Ali & Ors. MAC APP. 463/2011 decided on 10.01.2012; and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP. 189/2011 decided on 30.01.2012; and Division Bench Judgments of this Court in Delhi Transport Corporation and Another Vs. Lalita, ; and Rattan Lal Mehta v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB), this Court has held that in view of Rattan Lal Mehta (supra) increase in minimum wages cannot be given on account of future inflation.

13. The loss of dependency thus comes to Rs. 3,11,556/- (3709/- x 12 x 1/2 x 14).

14. The Claims Tribunal awarded a sum of Rs. 50,000/- towards Loss of Love and Affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of Loss of Love and Affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

15. The Claims Tribunal awarded a sum of Rs. 25,000/- towards Funeral Expenses. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it was held that the Funeral Expenses have to be awarded on actual basis. No evidence was led as to the amount spent on Funeral Expenses. In the absence of any evidence, it was just and proper to grant a sum of Rs. 10,000/- only towards Funeral Expenses.

16. No compensation was awarded towards Loss to Estate. A provision of Rs. 10,000/- ought to have been made. I make an award accordingly.

17. Respondents No. 1 and 2 proved on record the bill Ex. PW-1/1 issued by the Fortis Hospital for Rs. 2,09,379/- for expenditure on treatment. This seems to have escaped the attention of the Claims Tribunal. Respondents No. 1 and 2 are entitled to the expenditure incurred on the treatment of the deceased on account of injuries suffered by him till he died. I therefore, make an award of Rs.

2,09,379/- towards expenditure on treatment of the deceased as per bill Ex. PW-1/1.

18. In view of the above, the amount of compensation is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	4,67,334/-	Rs. 3,11,556/-
2.	Love and Affection	Rs. 50,000/-	Rs. 25,000/-
3.	Funeral Expenses	Rs. 25,000/-	Rs. 10,000/-
4.	Loss to Estate	--	Rs. 10,000/-
5.	Expenditure incurred on treatment	--	Rs. 2,09,379/-
	Total	Rs. 5,42,334/-	Rs. 5,65,935/-

19. The compensation is thus enhanced from Rs. 5,42,334/- to Rs. 5,65,935/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of deposit.

20. Tata AIG General Insurance Company Limited is directed to deposit the enhanced compensation alongwith interest within six weeks with UCO Bank, Delhi High Court Branch, New Delhi in the proportion as awarded by the Claims Tribunal in the name of the Appellants.

21. The enhanced compensation shall be released in favour of the Appellants in terms of the Tribunal''s order.

22. Both the Appeals are allowed in above terms. The statutory deposit of Rs. 25,000/- be refunded to the Insurance Company.

