
(1995) 02 DEL CK 0004

In the Delhi High Court

Case No : First Appeal No. 6 of 1989 and Cross Objection Appeal No. 552 of 1989

United India Insurance Co.

APPELLANT

Vs

Ram Rati and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 92

Citation : (1995) 1 AD 1107 : (1995) 33 DRJ 182

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : S.C. Dhanda and Y.R. Sharma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present judgment will dispose of the appeal filed by the Insurance Company, Fao No. 6 of 1989 and cross objections (C.M.No.552 of 89) on behalf of the respondents/claimants against the award dated October 3, 1988, passed by Shri V.B.Gupta, Judge, Motor Accidents Claims Tribunal, Delhi.

(2) The respondents/claimants filed Claim Petition u/s 110-A of the Motor Vehicles Act (hereinafter called the Act) for compensation of Rs.12 lakhs and for Rs.15,000.00 u/s 92-A of the Act. The respondents/claimants are the widow of the deceased Jai Prakash Tyagi, two daughters, one son and parents. The learned counsel for the respondents has stated that one daughter, Kumari Adesh has since expired on July 21, 1989.

(3) The case of the respondents/claimants is that deceased Jai Prakash Tyagi died in an accident, which took place on October 7, 1982 at about 5.45 P.M. The deceased was going on a two wheeler scooter No. DHP- 7070 as a pillion rider and this scooter was being driven by Shri Pavan Kumar and when it reached near village Sarai Kale Khan, Hazarat Nizamuddin, bus bearing No.DLP 6218 driven by respondent no.7, Surat Singh, came from behind at a very fast speed, in a rash and negligent manner, and hit the scooter without giving any horn or signal. The

impact of the accident was so great that Jai Prakash Tyagi succumbed to injuries on the spot and it is stated that the accident took place due to rash and negligent driving of respondent no.7, Surat Singh. The deceased was a young man, aged about 35 years and was in good health. He was earning Rs.13,000.00 per annum from his Garment business, Rs.8,000.00 per annum from the dairy farm, which he was running and was also having an income of Rs.15,000.00 per annum from agricultural business. The monthly income of the deceased was, accordingly, Rs.3,000.00 per month and he was paying income tax. The vehicle was owned by respondent no.8 and insured with the appellant, United India Insurance Co. Ltd. The ownership of the vehicle was admitted and it was also admitted that the same was insured with the appellant company. It was pleaded that the accident took place on account of rash, negligent and careless driving of the scooter driven by Pawan Kumar, who had no control on his vehicle and since the tyre of the two wheeler scooter was burst, the said scooter overturned and the pillion rider sustained head injuries on account of fall on the metttled road. The appellant Insurance Company admitted the factum of the insurance policy. However, it was pleaded that the liability of the company was limited to the extent of Rs.50,000.00 only.

(4) The following issues were framed on the pleadings of the parties:

1. Whether Shri Jai Parkash Tyagi sustained fatal injuries on 7.10.1982 in an accident due to rash and negligent driving of Bus No. Dlp 6218 on the part of respondent No.7 ? 2. Whether deceased died on account of fall on the main road from the scooter due to bursting of the tyre of scooter No. DHP-7070 driven rashly and negligently at a high speed by Pawan Kumar? 3. To what amount of compensation the petitioners are entitled and from whom? 4. Relief.

(5) The learned Judge disposed of Issues Nos. 1 and 2 on appreciation of evidence on record, which had been produced before him, and held that the accident was caused due to the rash and negligent driving of the bus driver and no evidence had been led to draw an inference that the accident took place on account of the bursting of the tyre of the scooter. Issues were decided accordingly.

(6) The Tribunal held that the age of the deceased was about 35 years at the time of his death. The evidence with regard to the income of the deceased was considered and the learned Judge gave his finding that the deceased was having an income from the agricultural land assessed at Rs.12,000.00 per annum and from his garment business of Rs.13,000.00 per annum. Therefore, the total income of the deceased was held to be Rs.25,000.00 per annum. It was further held that the deceased was contributing about Rs.1200.00 per month and the share of the claimants was worked on that basis as follows: Smt. Ram Rati, widow of the deceased (Claimant No.1)Rs.450.00 p.m. Kum. Raj Bala, unmarried daughter of the deceased (Claimant No.2) Rs. 150.00 p.m. Kum. Adesh, unmarried daughter of the deceased (Claimant No.3) Rs. 150.00 p.m. Master Puneet Kumar, son of the deceased (claimant No.4) Rs. 150.00 p.m.

Sh.Khacheroo Singh, father of the deceased (claimant No.5)Rs. 150.00 p.m.
Smt. Shyam Piari, mother of the deceased (claimant No.6)Rs. 150.00 p.m. This was the unusual method adopted by the Tribunal in award of compensation to the respondents/claimants.

(7) The learned counsel for the appellant does not dispute the findings on issues No. 1 and 2 before me. Therefore, the same are affirmed. He as well as learned counsel for the respondents/claimants have argued that the approach of the Tribunal was contrary to the law and principles of compensation, laid down by various Courts by not considering the earning of the deceased and an appropriate multiplier to assess the amount of compensation, as payable to the claimants. The learned Judge obviously has formulated his own principles in assessing the compensation in the above manner on the basis of the observations of Hon"ble the Supreme Court in Bishan Devi and Another Vs. Sirbaksh Singh and Others, . The same Judge passed similar order which was set aside by this Court in New India Assurance Co. Ltd. v. Pushpa and others . The relevant paragraphs from this judgment in this regard may be reproduced as follows:

"THE approach of the Tribunal is wholly contrary to law and principles of compensation laid down by the superior courts in India. Although it is true that the lump sum cash amounts payable in compensation cases are frittered away or likely to be frittered away in some cases, the superior courts have followed a different course of action for the proper protection of the interests of the claimants. Usually a reasonable sum is directed to be paid in cash and the balance to be deposited in a fixed deposit, maturing at the appropriate time. Another error in the approach of the Tribunal was that the total amount of compensation, which is usually fixed on the basis of the earnings of the deceased and the period of longevity has not been worked out by the Tribunal, thus creating an element of uncertainty. The monthly payment is also made depending on vague and uncertain events, such as marriage of the widow or the marriage of the son. The insurance company which is primarily liable to pay the compensation would be at a loss to know as to how much was the compensation payable since it had been made depending on the uncertain events such as marriage or death. The approach of the learned Tribunal is erroneous and the award/ judgment is, Therefore, set aside."

(8) The counsel for the Insurance Company as well as counsel for the respondents/claimants have both assailed this approach and have reiterated that the usual method of assessment of compensation by following an appropriate multiplier should be adopted and the award of the Tribunal be set aside on this ground. I quite follow the predicament of the parties and concur with the judgment of S.B.Wad, J. in the case of New India Assurance Co. Ltd. ?(supra) that approach of the Tribunal is contrary to law and principles of compensation laid down by the Courts in India. The method of apportionment is erroneous and the learned Tribunal fell in error in awarding the compensation in this manner.

The award on this account cannot be sustained.

(9) There is no challenge to the findings that the deceased Jai Parkash Tyagi sustained fatal injuries on October 7, 1982 in an accident due to rash and negligent driving of Bus No. Dlp 6218 by respondent no.7 and the deceased did not die on account of fall on the main road from the scooter due to bursting of the tyre and on account of rash and negligent driving at high speed by Pawan Kumar. The only question which now remains to be determined in this appeal is with regard to the quantum of compensation, which is payable to the respondents/claimants who have also preferred Cross Objections No. 552/89 claiming enhancement.

(10) The Tribunal has assessed the annual income of the deceased from his Garment business at Rs.13,000.00 per annum on the basis of the income tax record. The plea of income from dairy business has not been accepted as the respondents/claimants failed to furnish any data in this regard. The agricultural income was assessed at Rs.12,000.00 per annum on the basis of record, such as, Khatonies of agricultural land, which indicated that the deceased had share in the land. The evidence available with the Tribunal was considered and it was held that he was earning Rs.12,000.00 per annum from the agricultural land. Therefore, the total income of the deceased was estimated at Rs.25,000.00 per annum. The monthly amount which the deceased was contributing towards his family was assessed at Rs.1,200.00 per month and the same was taken as dependency on the facts of the present case.

(11) The learned counsel for the appellant has contended that the income has been over assessed as the deceased did not furnish any substantial proof in respect of the same. He reiterated that the same is liable to be reduced by a substantial amount and the dependency cannot be fixed as high as Rs.1200.00 per month. The respondents/claimants in their cross objections have, however, contended that the income from dairy business has been wrongly excluded and the Tribunal has erred in this regard. The income, according to the claimants, should have been assessed at a much higher figure, such as, Rs.36,000.00 per annum and this will obviously raise the figure of compensation on the basis of a higher contribution from the deceased for his family.

(12) I have perused the pleadings and the evidence on record. The income from garment business is assessed on the basis of income tax assessments and the agricultural income on the evidence on record such as the testimony of the father of the deceased as well as Khatonies in respect of the land. There is no infirmity and illegality in these findings and I have no reason to reject the assessment on both counts. The same is affirmed. The deceased was a young man of 35 years of age at the time of his death. It was reasonable to expect that he would have lived up to the age of atleast 60 years. The income of the deceased was held to be Rs.25,000.00 per annum and on this basis, the Tribunal after taking into account the statement of the wife of the deceased held that he was contributing Rs.14,000.00 per annum for his family and Rs.1200.00 per month was taken as

dependency in the facts of the present case.

(13) There is no doubt that the petitioner would have advanced in his career with the passage of time and there was every likelihood of his earning a higher amount and this consideration has already been upheld in the judgment of the Supreme Court, as reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . The dependency in this case was doubled taking in regard the prospects of future advancement although a lower multiplier of 12 was used as appropriate in that case. The facts as stated in another judgment of the Supreme Court as reported in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, are of great relevance. The deceased was an Army Officer of 36 years of age at the time when the occurrence took place. The income was Rs.2,200.00 per month. The annual amount which the deceased was held to be spending for his family was Rs.1400.00 and the multiplier of 24 was adopted giving the life span up to the age of 60 years. The deceased in the present case is 35 years of age and the dependency which has been upheld by the Tribunal was Rs.1200.00 per month. Therefore, an appropriate multiplier can be taken as 25 in the present case. The claimants on this basis are entitled to a sum of Rs.3,60,000.00 towards compensation. They are also held entitled to interest at the rate of 12 per cent per annum from the date of application till realisation. In case, the Insurance Company has already made some payment, they will be entitled to the credit of that amount and proportionate interest in working out the amount now held payable. The amount of compensation as worked out on the above basis shall be divided as follows:

- 1.SMT.Ram Rati (widow)60 per cent of the assessed amount including interest.
- 2.Raj Bala, daughter She is held entitled to 10 per cent of the assessed amount including interest.
- 3.Puneet Kumar, son He is held entitled to 10 per cent of the assessed amount including interest.
- 4.Khacheroo Singh and Smt.Shyam Piari, parents They shall be entitled to remaining 20 per cent of the assessed amount including interest.

(14) The appeal of the Insurance Company is dismissed and the cross objections are allowed in the above terms. Respondents/claimants shall also be entitled to costs, which are assessed at Rs.5,000.00 .