
(2012) 04 DEL CK 0065
In the Delhi High Court
Case No : MAC. APP. 689 of 2011

United India Insurance Co. Ltd.

APPELLANT

Vs

Pushpa and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 171
Penal Code, 1860 (IPC) — Section 279, 304A
Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (2012) 04 DEL CK 0065

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

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Kundan Kumar Lal, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant United India Assurance Company Limited impugns the judgment dated 18.05.2011 whereby a compensation of Rs. 23,10,500/- was awarded for the death of Jagmohan, who died in a motor accident which occurred on 12.10.2010. According to the Claimants" (Respondents No.1 to 5) version, the DTC bus No.DL-1PB-0561 in which the deceased was travelling at the time of the accident caused a violent jerk while passing over the speed breaker, upon which the deceased fell from the bus and suffered injuries which proved to be fatal.

2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) Respondents No.1 to 5 examined PW-2 Mahesh Chand, an eye witness to the accident. The Claims Tribunal rejected his testimony holding his presence at the time of the accident to be improbable, yet believed the Claimants" version as to the manner of the accident on the basis of the FIR registered u/s 279/304A IPC against the Respondent No.7 and his prosecution for the same.

3. The deceased was in Govt. service getting a salary of Rs. 15,086/- per month.

The Claims Tribunal after deducting a sum of Rs. 60/- paid to the deceased towards the washing allowance; added 30% towards future prospects and deducted one-fourth towards deceased's personal and living expenses and computed the loss of dependency as Rs. 22,85,454/-. The Claims Tribunal added Rs. 10,000/- each on account of Loss to Estate and Loss of Consortium and Rs. 5,000/- as Funeral Expenses to award the overall compensation of Rs. 23,10,500/-.

4. The following contentions are raised on behalf of the Appellant:-

(i) The involvement of the offending bus in the accident is not established. The Claims Tribunal having disbelieved the eye witness should not have accepted the involvement of the bus simply because a charge sheet u/s 173 Cr.P.C. was filed against the Respondent No.7, the driver of the DTC bus.

(ii) The compensation awarded is excessive and exorbitant as deduction towards income tax was not made.

(iii) The award of interest @ 7.5% per annum was exorbitant and excessive.

INVOLVEMENT OF THE BUS AND NEGLIGENCE

5. The Respondents No.1 to 5 (the Claimants) before the Claims Tribunal produced PW-2 Mohan Chand as an eye witness to the accident. The Claims Tribunal discussed his testimony and the issue on negligence as under:-

PW2 is the eye witness who has stated that on the day and time of accident in question he was travelling in the offending Bus being plyed on route no. 66. There was heavy rush in the Bus, therefore, he was standing at the back gate of the Bus. Few passengers were also standing on the front gate. At about 10:00 a.m. when the offending Bus reached Fateh Singh Marg ahead of Transport Authority Mall Road, Delhi, the offending Bus being in high speed and having overlooked the speed braker violently jerked causing fall of the deceased from the running Bus. Passengers of the Bus made hue and cry but the driver of the offending Bus did not stop the bus and stopped it only at ISBT. In cross-examination he stated that he was not known to deceased but was residing near the house of the deceased. He on the asking of the son of petitioner no. 1 had appeared in the present case. He stated that he had met IO on 14/10/10 when his statement was recorded. He also stated that he had not made any call after the accident in question nor had seen anybody calling the Police in respect of the accident in question. He stated that the offending Bus had stopped on each and every station after the place of occurrence of the accident and that ISBT was 05 bus stands away from the place of accident. He also stated that on each and every bus stand passengers had boarded and deboarded the Bus. At ISBT there were number of PCR Van but he had not informed any personnel or PCR Van.

As per FIR the date of accident is 12/10/10 and statement of Mahesh Chand was recorded on 14/10/10. It is recorded in the FIR that no eye witness was found on the spot. PW1 has also stated that she was not an eye witness and had not

known the said eye witness Mahesh Chand. It has also not been explained by PW2 as to how IO came to know about him being an eye witness. PW2 has stated that he himself neither gave any information of the accident/contacted Police nor was known to deceased or his family. Believing his version in entirety his conduct also shows that he had made no effort whatsoever to disclose the factum of accident to the Police at the earliest. He also stated that the offending Bus after causing the accident in question had stopped on each and every stand whereby people had even boarded and debarked the Bus. His testimony therefore, is contradictory and also not natural. R1W1 and RW2 both the driver and conductor of the offending Bus have stated that the offending Bus on the date of accident was travelling on the route of accident from Mukherjee Nagar to Old Secretariat, Delhi and had started at about 09:22 a.m. from Mukherjee Nagar and would have normally reached the Old Secretariat, Delhi by about 09:3540 a.m. As per certified copy of charge sheet U/s 173 Cr. PC in respect of accident in question, respondent no. 1 was facing trial U/s 279/304A IPC in the concerned court of law. It is also admitted by respondent no. 1 that no complaint whatsoever against his false involvement in the accident in question was made by him or on his behalf to any authority.

As per MLC deceased had been brought to the hospital by the Police with no movement and no bleeding, from road near Transport Authority Office, Timar Fur, found at 10:00 a.m. He was declared dead on arrival. As per postmortem report, deceased had been sent for postmortem with the history of alleged road traffic accident dt.12/10/10 and had died due to antemortem injuries caused by blunt force impact which were possible in a road traffic accident. No other independent eye witness has been examined by any of the parties.

The standard of proof required in a motor accident claims petition in regard to rash and negligent driving and factum of accident is only of prima facie nature.

Therefore, in view of the challan, DAR and other documents available on record, it is prima facie proved that deceased died due to injuries caused in the road traffic accident caused by rash and negligent driving of respondent no. 1.

6. The Claims Tribunal found the conduct of PW-2 to be unnatural as the witness did not ask the driver of the offending vehicle to stop the bus and because there were five stops of the bus right from the place of the accident till his destination at ISBT. He (PW-2) did not report the matter to the police on the date of the accident. The statement of Mohan Chand was recorded by the Investigating Officer on 14.10.2010 i.e. two days after the accident.

7. There is no dispute about the fact that at the time of the registration of the FIR it was mentioned that no eye witness was found at the spot. It is not unusual that many a time the driver does not stop the bus after causing the accident and the passengers travelling in that very bus do not insist and compel the driver to stop the bus. It cannot be lost sight of that in our society many persons are self-centered. In many serious offences including murder cases an eye witness is not

available at the spot at the time of the visit of the IO. A witness appears later on and gives an explanation. But, that would not belie the prosecution version. It has come in the cross-examination that the deceased was residing near the house of PW-2. At the same time, the witness deposed that he did not know the deceased (from before) as his house was ten minutes walk from the house of the deceased. He deposed that his (PW-2's) daughter returned home at 6:00 P.M. and informed him about the accident. It was only then that PW-2 thought of meeting the IO and thus there was a delay in his examination by the IO. I do not find any tangible reason to discard his testimony. No motive has been imputed to PW-2 to falsely implicate Respondent No.7 as the person responsible for causing the accident.

8. In *Ravi Vs. Badrinarayan and Others*, there was a delay of two months in lodging an FIR by the victim in an injury case arising out of a motor accident. It was held that in cases of delay, the Courts are required to examine the evidence with a closer scrutiny and if the Courts find that there is no indication of fabrication, a Claim Petition cannot be dismissed merely on the ground of delay in lodging the FIR.

9. In the absence of any motive to falsely implicate Respondent No.7 as the person responsible for causing the accident, I would accept the explanation given by PW-2 that he came to know only in the evening that his neighbour had died in the accident which he saw in the morning.

10. No explanation has been given by Respondent No.7 as to why he was implicated in the criminal case falsely. The Respondent No.7 as also the Conductor of the bus did not lodge any complaint with Higher Police Authorities or with their Superior Officers regarding the false involvement of the DTC bus and Respondent No.7 in the accident. Thus, I am of the view that the Claims Tribunal erred in rejecting PW-2's testimony as an eye witness to the accident.

11. From the testimony of PW-2 coupled with the report u/s 173 Cr.P.C. filed against Respondent No.7 for an offence u/s 279/304A IPC, the involvement of the bus and the negligence on the part of Respondent No.7 is established on the touchstone of preponderance of probability.

12. It is urged by the learned Counsel for the Appellant that as per the Claimants' version, the deceased was standing in the overcrowded bus. Since he was not seated on the seat he was guilty of contributory negligence and the compensation payable has to be reduced according to his negligence.

13. While travelling in a public transport it is the duty of the driver and the conductor of the bus to ensure that there is no injury caused to any occupant in the bus whether he is seated or is standing. If the driver and the conductor found it to be unsafe, the driver should not permit overcrowding of the bus or of anybody travelling while standing in the bus.

14. In *Bhaskaran v. Ravindran & Ors.*, 1900 ACJ 1032 a Division Bench of the

Kerala High Court had the occasion to deal with the question of passengers standing on the footboard while travelling in a bus. The Division Bench held as under:-

16. The correct principle appears to be what we have already indicated. It is the duty of the conductor to see that the bus is set in motion only after all alighting passengers have alighted and passengers intending to travel in the bus board the bus. Boarding a bus does not mean merely entering the footboard. Boarding the bus means getting inside the bus and either sitting in a seat or standing in the space reserved for standing passengers. A conductor has a statutory duty to see that there are no footboard passengers. If a passenger is on the footboard and there is no space at all for him to sit or stand inside the bus, he must be asked to get down and the bus can be set in motion only after he alights. When there is sitting or standing space inside the bus, it is the duty of the conductor to see that a passenger who is on the footboard gets inside the bus and seats himself or stands in the space reserved for standing passengers before giving signal for the bus to start. This corresponds with the driver's duty to ensure that bus is moved only after ensuring safe travel conditions. In the discharge of his duty he is largely guided by the instructions of the conductor. If a bus with no vacant seat and no standing space is started when a passenger is on the footboard and he is not asked to alight from the bus or not cautioned against travel on footboard and accident takes place and the footboard passenger sustains injury, wholly or partly on account of his position on the footboard, he cannot be held to be guilty of contributory negligence. It may be that if he refuses to alight in spite of the direction by the conductor or if he is cautioned about the risk he is undertaking by travel on footboard, it is not possible to absolve him of the responsibility in the accident. We, therefore, hold that the claimant was not guilty of contributory negligence."

15. It is, therefore, evident that simply because the deceased was standing near the rear gate of the bus, he cannot be said to have contributed to the accident.

QUANTUM OF COMPENSATION

16. The deceased was working as a Peon with PWD. He was in settled Government Service. On the basis of the ratio in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Claimants were entitled to an addition of 30% in the deceased's income on account of future prospects as the deceased was aged about 47 years on the date of the accident.

17. The liability of income tax on an annual income of Rs. 1,80,000/- in the Assessment Year 2011-2012 was almost NIL. The Claims Tribunal correctly applied the principles laid down in Sarla Verma (supra), to compute the loss of dependency as Rs. 22,85,454/-. Rather, the Claims Tribunal did not award any compensation towards Loss of Love and Affection.

18. The overall compensation of Rs. 23,10,500/- cannot be said to be exorbitant or excessive, on the other hand, the same is just and reasonable.

RATE OF INTEREST

19. The Claims Tribunal awarded interest @ 7.5% per annum. It is urged by the learned Counsel for the Appellant that the award of interest @ 7.5% per annum was exorbitant and excessive. Learned Counsel for the Appellant places reliance on *Gurdeep Singh Vs. Bhim Singh and Others*, *M. Mani v. Divisional Manager, New India Assurance Co. Ltd. & Anr.*, 2012 (4) SCALE 164 and *Sharanamma and Others Vs. M.D., Divisional Contr. Nekrtc*, where interest @ 6% per annum was awarded by the Claims Tribunal. In *Gurdeep Singh(supra)*, the accident took place in the year 1994. In *M. Mani(supra)*, the accident took place in the year 2002 and in *Sharanamma & Ors.(supra)*, the accident took place in the year 2005. In the year 2002 and 2005, the interest rates were very low. Although, in the year 1994, the bank rate of interest were higher than 6%. In the above three cases relied upon by the learned counsel for the Appellant, a general order was passed to grant interest @ 6% per annum. Perhaps the same was granted by the Claims Tribunal/the High Court.

20. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, the Supreme Court culled out the factors to be taken into consideration while awarding interest in motor accident cases. Para 6 and 18 of the report are extracted hereunder:-

6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

x x x

x x x

18. Three decisions were cited before us by Mr. A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deducted nor can any rate of interest be fixed to have a general application in motor accident claim cases

having regard to the nature of provision u/s 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above.

21. In *Mrs. Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd.*, the interest granted by the National Commission @ 9% was upheld by the Supreme Court. In *Sant Singh Vs. Sukhdev Singh and Others*, , interest @ 9% per annum was awarded by the Hon"ble Supreme Court. In *Raj Kumar Vs. Ajay Kumar and Another*, the interest @ 9% awarded by the Claims Tribunal was approved by the Supreme Court. In *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another*, interest @ 9% was awarded on the enhanced amount of compensation.

22. Normally, the Claims Tribunal and the Courts follow the bank rate of interest on long term deposits while awarding interest in Claim Petitions under the Motor Vehicles Act. Of course, other factors, as stated above in *Abati Bezbaruah*(supra) are taken into consideration. In this case, the accident occurred in October, 2010. The rate of interest on long term deposits was more than 7.5% per annum. In fact, since the year 2011, the rate of interest are in the vicinity of 9% per annum. In the circumstances, I would say that the Claims Tribunal was quite conservative while awarding the rate of interest. It cannot be said that the grant of interest @ 7.5% per annum in the year 2011 was excessive or arbitrary. Moreover, the component of interest in the case was very small as the accident occurred in October 2010 and the Claim Petition was decided in May, 2011. The award of interest, therefore, was not an issue which should have agitated by the Appellant Insurance Company.

23. There is no ground to interfere with the impugned judgment.

24. The Appeal is devoid of any merit; the same is accordingly dismissed.

25. No costs. Pending applications also stand disposed of.