
(2011) 08 DEL CK 0296

In the Delhi High Court

Case No : FAO 748 of 2003 and CM No. 7136 of 2004

U.P. State Road Transport Corpn.

APPELLANT

Vs

Jyotsana Yadav and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2011) 7 AD 249 : (2011) 182 DLT 614 : (2011) 125 DRJ 260 :
(2012) 2 TAC 820

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Garima Prashad and Laxmibai, for the Appellant; Rajesh Banati, Hari Mohan and Arpit Bhargava, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 seeks to impugn the judgment and award of the Motor Accidents Claims Tribunal, Delhi dated 8 July, 2003 whereby the learned Tribunal awarded a sum of Rs. 39,86,064/- (Rupees Thirty Nine Lakh Eighty Six Thousand and Sixty Four Only) to the Respondents No. 1 to 4 with interest thereon at the rate of 12% per annum.

2. The facts pertinent for the decision of the present appeal may be briefly delineated as follows.

3. On 28.05.1999, one Shri Sanjay Kumar Yadav, at about 5.45 p.m., was commuting in his Maruti car No. UP-15F-8501 on the Delhi-Meerut road when a bus belonging to the U.P. State Road Transport Corporation, bearing No. UHN-2624 (hereinafter referred to as "the offending bus") came from the opposite direction at a very fast speed, driven in a rash and negligent manner by the Respondent No. 5, and hit against the car of the deceased head-on causing fatal injuries to the deceased. As a result of the aforesaid impact of the accident,

the car of the deceased was pushed back from the place of accident and completely smashed. The deceased was crushed to death and his dead body was extricated from the smashed car by one Shiv Kumar, an eye-witness to the accident. The Respondent No. 1 is the young wife of the deceased, the Respondent No. 2 is the daughter of the deceased, aged one and a half years at the time of the accident, and the Respondents No. 3 and 4 are the father and the mother respectively of the deceased. The aforesaid legal representatives of the deceased filed a Claim Petition u/s 166 of the Act and an enquiry was conducted by the Claims Tribunal culminating in the award aforementioned. Aggrieved therefrom, the present appeal has been preferred by the U.P. State Road Transport Corporation (for short "U.P.S.R.T.C.").

4. I have heard Ms. Garima Prashad, the learned Counsel for the Appellant and Mr. Rajesh Banati, the learned Counsel for the Respondents No. 1 to 4 at length and scrutinized the records. The Respondent No. 5, the driver of the offending bus remained unrepresented.

5. Ms. Garima Prashad, the counsel for the Appellant has assailed the award primarily on two grounds:

(i) The accident was the outcome of the rash and negligent driving of the deceased who was guilty of contributory negligence in the causation of the accident, but the learned Tribunal had erroneously passed the award against the Appellant.

(ii) The award of a huge sum of Rs. 39,86,064/-with interest thereon was wholly unjustified and disproportionately excessive when compared with the income of the deceased. The rate of interest awarded is also excessive and the award deserves to be scaled down so as to give reasonable damages and not to create a windfall resulting in unjust enrichment.

6. Mr. Rajesh Banati, the learned Counsel for the Respondents No. 1 to 4, on the other hand, sought to support the award on both the aforesaid counts. On the first aspect viz., contributory negligence of the deceased, he contended that the learned Tribunal has threadbare discussed the evidence of the eye witness to the accident, namely, PW1 Shiv Kumar and rightly rejected the testimonies of RW1 Puran Singh, the driver of the offending bus and RW2 Jai Karan, who claimed to be a passenger in the bus at the time of the accident and quite clearly was a planted witness. On the second aspect, he urged that the learned Tribunal in computing the income of the deceased had gone by the salary certificate proved on record by the employer of the deceased, rather than by the job offers received by the deceased from foreign countries offering him handsome amounts of remuneration payable in U.S. dollars. The loss of dependency assessed by the learned Tribunal on the basis of the salary certificate was on the lower side and deserved to be enhanced.

7. It is proposed to deal first with the contention of the counsel for the Appellant with regard to the contributory negligence of the deceased in causing the

accident. In this regard, PW1 Shiv Kumar, an eye witness to the accident stated that on 28.05.1999, he alongwith his brother and one Akhilesh was going to Meerut by car bearing registration No. DL-2CB-0795. Another Maruti car bearing No. UP-15F-8501 driven by the deceased was going ahead of the car in which he was travelling, when from the opposite direction a bus belonging to the U.P.S.R.T.C. bearing registration No. UHN-2624 driven at a high speed and in a rash and negligent manner was seen coming. The said bus hit the Maruti car going ahead of his car. It was a head-on collision, in which the car was completely smashed and the driver of the car, Sanjay Kumar Yadav died at the spot. The witness further stated that he had informed the police and with great difficulty had taken out the dead body from inside the car. The police had recorded his statement. He categorically stated that the accident had taken place due to the fault of the bus driver. Though extensively cross-examined by the counsel for the Appellant, the witness stuck to the version of the accident given by him. In his cross-examination, in answer to a query put to him, he stated that he was a distant relative of the deceased who happened to meet the deceased per chance at Modi Nagar. He stated that he did not know the locality where the office of the deceased was located. The car of the deceased was ahead of him the entire distance of 25 kms. from Modi Nagar till the place of the accident and was at a distance of about 12 feet from his car. According to this witness, the width of the road was about 40 feet and the road was without a divider. The speed of the car of the deceased was 40 to 50 kms. and the car was being driven on the correct side of the road. He stated that there was no vehicle ahead of the car driven by the deceased, and categorically denied the suggestion that in the process of overtaking a truck the car went on the wrong side of the road and struck against the bus. He further stated that he had noticed the offending bus about 2 or 3 meters ahead prior to the accident. He also stated that the car of the deceased was pushed back by one and a half feet on account of the collision.

8. To counter the evidence of PW1 Shiv Kumar and to prove its case, the Appellant (the Respondent No. 2 in the Claim Petition) examined RW1 Puran Singh, the driver of the offending bus and RW2 Jai Karan, alleged to be one of the passengers of the offending bus. RW1 deposed that on the date of the accident he was driving the bus from Khatoli to Delhi. After dropping some passengers at the police check post near Mahiuddin pur, he had started his bus when all of a sudden a Maruti car emerged from the opposite direction from behind a truck, which, in the process of overtaking the truck came on the wrong side, and in order to avoid the accident he took his bus towards the left side on the kachha road. Since the driver of the Maruti car had lost control of the car, it struck against the front right portion of the bus despite his efforts to avoid the accident. After the accident, he had informed his superiors and taken photographs Ex.RW1/1 to Ex.RW1/7, the negatives of which were Ex.RW1/8.

9. In the course of his cross-examination, in answer to a query put to him, RW1 Puran Singh admitted that he was driving the bus from Khatoli at a speed of 60 kms. per hour. He also admitted that the photographs had been taken by him

later on in the evening when the police had already removed the car from the place of the accident. Significantly, the witness stated in cross-examination that he did not see the car before the accident, thereby completely belying the story that he had seen the car and made an attempt to avoid the accident. In answer to a query put to him in cross-examination, he stated that the road was a four lane road and the truck was being driven in the third lane of the road. I pause here to notice that as observed by the learned Tribunal, this statement of the witness that the road was a four lane road is completely falsified by the photographs taken by the witness himself. As observed by the learned Tribunal, had it been so, there would have been no need for the deceased to overtake the truck from the right side of the truck when the deceased could have quite conveniently overtaken the truck from the left side. Then again, the photographs Ex.RW1/1 to RW1/7 clearly show that at the time when the said photographs were taken not only the car was removed by the police but the bus too had been removed before the photographs were taken. The bus in fact is shown right in front of an electric pole with huge bushes/trees. From the photographs, it is apparent that there could not have been any vehicle between the offending bus and the pole. At the risk of repetition, it is stated that the photographs relied upon by RW1 himself also falsify his statement that the road was a four lane road in which the truck was being driven in the third lane.

10. RW2 Jai Karan, who claimed to be one of the passengers of the offending bus, reiterated the version of the accident given by RW1. A close scrutiny of his evidence, however, shows that it is highly doubtful that he was a passenger in the offending bus. If, as deposed by RW2, he had given his name and particulars to the officials of the bus of the U.P.S.R.T.C., they would have immediately taken into possession his ticket or at least impressed upon him to preserve the same for being produced before the Tribunal. He stated that he was a summoned witness and in the same breath he stated that he had received a letter from the U.P.S.R.T.C. to appear in the Court. This was obviously stated by him as it is on the record that no summons were issued to him.

11. The cross-examination of the aforesaid witness is relevant. In his cross-examination, he stated that he had not given any statement to the police that there was no negligence on the part of the driver of the offending bus. He also stated that he could not tell the speed of the bus immediately before the accident. Significantly also, he stated that he did not see the Maruti car before the accident. If he could not see the car of the deceased prior to the accident, his statement made in his examination-in-chief to the effect that the car of the deceased emerged on the road after overtaking the truck from the opposite side and that the car was at a fast speed cannot be relied upon. His further statement that the deceased had lost control over the car and caused the accident also cannot be relied upon. Though earlier, in his cross-examination, he stated that he had occupied the seat just behind the seat of the driver of the bus, on a query put to him in cross-examination, he stated that he had boarded the bus from Meerut only 5 or 7 minutes before the accident. On a further query put to him,

he stated that the distance between the place in Meerut from where he had boarded the bus and the place of the accident was about 10 to 12 kms. If he is to be believed that the bus had covered 10 to 12 kms. within 5 or 7 minutes, the necessary inference is that the bus was being driven at a fast speed.

12. From the aforesaid evidence on record, in my opinion, it stands established on record that it was the driver of the offending bus who had caused the accident by his high speed, rash and negligent driving. The presence of PW1 Shiv Kumar at the time of the accident cannot be doubted as he was the person who, as set out above, had extricated the dead body from the smashed car and informed the police about the accident. It was on his statement that the First Information Report was prepared. No motive for his deposing falsely has emerged on record and in fact his testimony has emerged unscathed after cross-examination. The testimonies of RW1 and RW2, on the other hand, are replete with loopholes. Insofar as RW1 is concerned, he himself admitted that he was driving the bus at a speed of 60 kms. per hour and that he did not see the car prior to the accident. The presence of RW2 at the time of the accident also appears to be highly doubtful. Even assuming that RW2 was travelling in the offending bus on the date of the accident, his testimony does not establish on record that the accident was caused due to the rash and negligent driving of the Maruti car by the deceased.

13. The entire version of the Appellant that the car was trying to overtake a truck at the time of the accident also could not be corroborated in evidence. In the site plan, the bus is shown to be parked on the kachha part of the road and in front of the bus is a pole with trees and bushes on the side. It is evident that the accident did not take place on the kachha part of the road, as with the pole in front of the bus there was no space for the car. Evidently also, the driver, who absconded from the spot (though later on he appeared at the spot for the purpose of taking photographs), had removed the bus from the place of the accident and parked it on the kachha side of the road, possibly to substantiate his version that he had moved to the kachha part of the road to avoid the accident. The only other possibility may be that after hitting the car, the bus which was out of control of its driver moved to the kachha part of the road. Even otherwise, the fact that the car did not get entangled with the bus shows that it was the bus which was out of control rather than the car. If the car rammed into the bus, it would, most certainly have got entangled with the bus. The contention of the learned Counsel for the Appellant that the learned Tribunal erroneously did not hold the deceased to be guilty of contributory negligence is, therefore, devoid of merit. The finding of the Tribunal that the accident was the outcome of the high speed, rash and negligent driving of the bus driver is accordingly affirmed.

14. The learned Counsel for the Appellant, as noticed above, has also assailed the quantum of compensation awarded to the Respondents No. 1 to 4 on two grounds viz., that the multiplier adopted by the learned Tribunal for augmenting the multiplicand constituting the loss of dependency of the Respondents No. 1 to

4 was not the appropriate multiplier and the rate of interest awarded by the Tribunal was too high.

15. As regards the quantum of compensation awarded to the Respondents No. 1 to 4, there is on record the salary certificate of the deceased Ex.PW2/1, which was proved on record by his employer. The total salary of the deceased as per the salary certificate was Rs. 17,829/-per month at the time of the accident. However, there are also on record job offers made to the deceased by various firms in the United States offering a salary of U.S. dollars 50,000/-to 55,000/-to the deceased (Ex.PW3/19, Ex.PW3/20 and Ex.PW3/22). The contention of the counsel for the Respondents No. 1 to 4 is that the learned Tribunal while assessing the income of the deceased did not take into account the aforesaid job offers received by the deceased. It was further contended by the counsel that though PW2, Satya Narain Sharma, Senior Executive (Finance), Centre for Development of Telematics, the organization where the deceased was working, had deposed in the witness box that the deceased, who was drawing a salary of Rs. 17,829/-per month at the time of accident, would have been promoted as Executive Director by the time of his retirement in the year 2030 and would have been entitled to the salary of Rs. 46,680/-per month, the learned Tribunal did not take into account the fact that the salary of the deceased at the time of his superannuation would be in the sum of Rs. 46,680/-per month. Instead, the Tribunal assessed the average monthly income of the deceased to be in the sum of Rs. 26,743.50 by applying the dictum laid down in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , that is to say, the learned Tribunal took the monthly income of the deceased and added to the same double the amount of his salary and then divided the sum total by two (Rs. 17,829/-+ Rs. 35,658/-? 2 = Rs. 26,743.50).

16. The learned Counsel for the Respondents No. 1 to 4 submitted that when there was specific evidence on record depicting the bright future prospects of increase in the income of the deceased, the learned Tribunal was not justified in assessing the average monthly income of the deceased in the aforesaid manner. The learned Counsel for the Respondents No1. to 4 also contended that for the purpose of calculating the monthly dependency of the Respondents No. 1 to 4, the learned Tribunal ought to have deducted not more than one-fourth of the income of the deceased towards the personal expenses of the deceased keeping in view the fact that the deceased had four dependent family members.

17. Indisputably, the deceased was employed as an Engineer in the Centre for Development of Telematics, Telecom Technology Centre of the Government of India and his monthly remuneration as per his salary certificate was Rs. 17,829/-, i.e., Rs. 2,13,948/-per annum and after deduction of income tax was Rs. 1,88,948/-per annum according to the testimony of his employer - PW2. Besides the said salary, PW2 has deposed that the deceased was also getting book allowance at the rate of Rs. 2,000/-per month, newspaper allowance at the rate of Rs. 150/-per month, Rs. 3,912/-per annum as leave maintenance, leave

encashment of one month salary every year and LTC encashment in four years. Indisputably also, the deceased had very good job offers from different firms in the United States. PW2 has deposed that at the end of his career, the deceased, had he remained in his existing job, would have drawn a salary of Rs. 46,680/- per month. It is also not in dispute that the deceased died at the very young age of 28 years, his date of birth being 30.11.1970. There is, thus, no manner of doubt that the deceased had bright future prospects and a long span of working life ahead of him had he not met with the unfortunate accident.

18. The learned Tribunal in its award, however, adhered to the guidelines laid down by the Supreme Court with regard to the manner of calculating the future increase in the income of a deceased person whose life span is cut short by a vehicular accident. The Tribunal had thus taken the average monthly income of the deceased to be his actual income at the time of the accident with 50% increase. Though the Tribunal for the aforesaid purpose cited and relied upon the decision in the case of Sarla Dixit (supra), I find that this addition is also in consonance with the guidelines laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Consequently, I see no reason to differ with the learned Tribunal in this regard. The average annual income of the deceased is thus taken to be in the sum of Rs. 1,88,948/-(average annual income on the date of the accident) plus Rs. 94,474/-(50% increase) is equal to Rs. 2,83,422/-(Rupees two lakh eighty three thousand four hundred and twenty two only). However, I am of the view that the learned Tribunal ought to have deducted only one-fourth of the income of the deceased towards his personal expenses keeping in view the fact that the deceased had four dependant family members. Deducting one-fourth of the income of the deceased towards his personal expenses, the loss of dependency of the Respondents No. 1 to 4 comes to Rs. 2,12,566/-per annum (Rupees two lakh twelve thousand five hundred and sixty six only).

19. As regards the multiplier to be adopted for augmenting the aforesaid multiplicand, though the Tribunal has applied the multiplier of 18, in my view, the multiplier of 17 would be the appropriate multiplier. In the case of Sarla Verma (supra), the Hon"ble Supreme Court has tabulated the multipliers applicable to the various age groups of deceased persons, and for the age group of 26 years to 30 years the appropriate multiplier is set out as the multiplier of 17. Thus calculated, the total loss of dependency of the Respondents No. 1 to 4 comes to Rs. 36,13,622/-[Rupees Thirty Six Lakh Thirteen Thousand Six Hundred and Twenty Two Only] (that is, Rs. 2,12,566/- X 17).

20. Apart from the pecuniary damages, the Tribunal has awarded to the legal representatives of the deceased a sum of Rs. 20,000/-towards loss of consortium, Rs. 15,000/-towards funeral expenses, Rs. 50,000/-towards damage caused to the car of the deceased and Rs. 50,000/-to the Respondent No. 2 exclusively over and above the total compensation of Rs. 39,36,064/-for her education and marriage expenses. I see no reason to interfere with the award of

Rs. 20,000/-towards the loss of consortium and Rs. 15,000/-towards funeral expenses. However, in my view, it was not open to the learned Tribunal to award Rs. 50,000/-as damages for the car of the deceased, more so, as it is not known as to whether the Respondents No. 1 to 4 had received any insurance money for the damage caused to the car from the insurer of the car. Likewise, in my view, it was not open to the learned Tribunal to award the sum of Rs. 50,000/-towards the education and marriage expenses of the Respondent No. 2. However, in view of the fact that the learned Tribunal has not awarded any amount whatsoever to the Respondents No. 1 to 4 for the loss of love and affection of the deceased and loss of estate of the deceased, a sum of Rs. 20,000/-each is awarded to the Respondents No. 1 to 4 towards loss of love and affection and loss of estate of the deceased. Thus, in all, a sum of Rs. 36,88,622/-is awarded to the Respondents No. 1 to 4, which may be rounded off to Rs. 36,89,000/-(Rupees Thirty Six Lakh Eighty Nine Thousand Only).

21. As regards the interest, the learned Tribunal has awarded to the Respondents No. 1 to 4 interest at the rate of 12% per annum from the date of the filing of the petition till 31.02.2001 (sic.31.12.2001) and thereafter at the rate of 9% per annum till the date of actual payment. It was further directed by the Tribunal that in case the compensation was not paid within a period of one month, the Appellant shall be liable to pay interest at the rate of 12% per annum from the date of the petition till the date of actual payment. It is however deemed just and fair to award interest at the uniform rate of 9% per annum from the date of the institution of the petition till the date of payment.

22. In view of the aforesaid, the award stands modified to the extent that the quantum of compensation payable to the Respondents No. 1 to 4 is scaled down from Rs. 39,86,064/-to Rs. 36,89,000/-and the interest rate is varied as set out hereinabove. Since the entire award amount is lying deposited in this Court in accordance with the directions issued by the Hon''ble Supreme Court, the Registry shall release the amount of the award as modified hereinabove to the Respondents No. 1 to 4 in the ratio apportioned by the learned Tribunal. If after the calculation of interest there is a shortfall, the Appellant shall deposit the same within one month of the date notifying the Appellant of the shortfall by the Registry.

23. The appeal is partly allowed in the above terms. The appeal and CM No. 7136/2004 stand disposed of.

24. Records of the Claims Tribunal be sent back.