

(2008) 01 DEL CK 0051
In the Delhi High Court
Case No : MAC App. 991 of 2006

U.P.S.R.T.C.

APPELLANT

Vs

Mr. Sharafat Hussain and Another

RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0051

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Garima Prasad, for the Appellant; Rajjuddin Khan, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this appeal, the appellant seeks to challenge the impugned award dated 3.7.2006, primarily on the ground that the Tribunal has not taken into consideration the notional income of the deceased as applicable on the date of the accident.

2. Before adverting to deal with the contentions of the parties, it would be appropriate to give brief facts of the case as under:

On 12.6.1993, deceased Vakila Begum, her parents and her sister were traveling in the bus bearing registration No. UG-E-389. When the bus reached the village Arniya, Distt. Bulandshahar, Uttar Pradesh, the driver of the bus lost control and due to which hit a tractor which was coming from the opposite side and the bus turned turtle, as a result of which the deceased Vakila Begum died in the accident.

3. The counsel for the appellant contends that as per the Second Schedule of the Motor Vehicles Act, the notional income for the age of 15 years as laid down therein is Rs. 15,000/- p.a., while the Tribunal has taken the notional income of the deceased at Rs. 22,500/- p.a. Counsel for the appellant further contends that there is no basis for taking the notional income of the deceased at Rs. 22,500/-

p.a. In support of her argument counsel for the appellant has placed reliance on the judgment of the Apex Court in *New India Assurance Co. Ltd. Vs. Satender and Others*, . The contention of the counsel for the appellant is that in the said case involving the death of a child of 9 years of age, the Apex Court has awarded compensation in the sum of Rs. 1,80,000/-. Counsel for the appellant thus contends that the compensation in the case of the minor children should not exceed the said amount as per the law laid down by the Apex Court in *New India Assurance Co.'s case*. (Supra).

4. Per contra Mr. Rajjuddin Khan, counsel for the respondents contends that the Tribunal has passed just, fair and equitable award and the same does not require any interference in the appeal.

5. I have heard counsel for the parties and have perused the record.

6. Loss of a child to the parents is unrecoupable and no amount of money can compensate the parents.

7. The present case involves the case of a girl of 15 years who died in the road accident involving the bus of the appellant and one tractor. The respondents/claimants had not impleaded the driver and owner of the tractor, Therefore the Tribunal has passed the award holding the appellant liable only to the extent of 50% of the compensation amount. The respondents claimants thus have already been deprived of the remaining 50% of the award amount due to their fault of not impleading the driver and owner of the tractor who were equally responsible in causing the said accident. The Tribunal after taking the notional income of the deceased at Rs. 22,500/- has passed the award in the sum of Rs. 2,25,000/-, after deducting 1/3rd income towards the personal expenses of the deceased from the said notional income of Rs. 22,500/-. The contention of the counsel for the appellant is that the Tribunal should not have deviated from the notional income of Rs. 15,000/- as laid down in the Second Schedule of the M.V. Act. Although the said contention of the counsel for the appellant appears to be attractive but at the same time does not appear to be justified. The Second Schedule u/s 163A of the M.V. Act was brought on the Statute Book in the year 1994 and since then no revision in the said schedule has taken place. As per Section 168 of the M.V. Act it has to be borne in mind by the Tribunal that the just compensation has to be made in the facts and circumstances of each case. The Apex court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, and *State of Haryana and Another Vs. Jasbir Kaur and Others*, has held as under:

15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury

may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just.

8. Multiplier of 15 has been applied in the facts of the present case and even the notional income of the deceased for the said period of 15 years has to be taken into consideration. I, Therefore, do not find myself in agreement with the argument of the counsel of the appellant that the notional income as applicable on the date of the accident alone has to be taken into account for assessing the income of the deceased. While taking the multiplier of 15, the entire income of the deceased for the said period has to be taken into account and not the notional income as prevalent on the date of the accident. I, Therefore, do not find force in the argument of the counsel for the appellant. The Tribunal has not considered any increase in the said notional income, and Therefore, there is no illegality in taking the overall income of the deceased at Rs. 22,500/-. The reliance placed by the counsel for the appellant on the aforesaid judgment may not be of any help to the appellant as in the facts of the said case the death of a child of 9 years was involved and the Apex Court after referring the case of Lata Wadhwa and Others Vs. State of Bihar and Others, has held that while computing the compensation, distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years has to be made. Traditionally, Courts in India have been recognizing that a child of tender age could not show his future propensities and prospective loss to the parents, Therefore, it would be impossible to determine the reasonable expectation of pecuniary benefit if the child had lived. But, a child above 10 years could show his acumen. Thus, there is a distinction in assessing the income of the aforesaid two categories of children, categorised for the purpose of compensation. In the

said case of Satender and Ors.(Supra) involving the death of a child of 9 years the Apex Court has awarded a sum of Rs. 1,80,000/-, while in the present case death of a child of 15 years has taken place. Therefore, I do not find that in the facts of the present case, the said amount of compensation can be taken into consideration.

9. There is no merit in the appeal.

10. Dismissed.