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Delhi High Court

Case No: MAC App. No. 492 of 2004

Smt. Hansi Devi and Others	APPELLANT
Vs	
Shri. Sarbhjeet Singh, Shri jagroop Singh and National Insurance Company Ltd.	RESPONDENT

Date of Decision: Oct. 3, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: Rajeev Saxena, for the Appellant; A.K. Soni, for R-3, for the Respondent

Final Decision: Allowed

Judgement

V.B. Gupta, J.
Present appeal has been filed by the appellants, who are claimants in this case u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act"), seeking enhancement of the compensation awarded in this case vide judgment dated 11th August, 2004, passed by Sh. M.L. Mehta, Judge, MACT (for short as Tribunal''), Delhi.

2. Brief facts of this case are that on 10th May, 2001, at about 9.10 p.m., at main Wazirabad Road, near Sur Ghat police booth, deceased Devinder Singh along with his friend Goverdhan Singh was going as a pillion rider on the bicycle. When they reached near police booth on main Wazirabad Road towards Yamuna Bridge and were on the left side of the road, a truck bearing No. HR-37-3268 being driven by respondent No. 1, Sarabhjeet Singh in a very rash and negligent manner and at a high speed, came from behind and struck their bicycle. The deceased was crushed by the truck and was taken to trauma centre, where he expired.

3. The said truck was driven by respondent No. 1 with the permission, consent and under the employment and supervision of respondent No. 2/Jagroop Singh. The

truck was insured with respondent No. 3/National Insurance Company.

4. The appellants claimed compensation amounting to Rs. 20 lacs on account of loss of income, love, affection and security etc.

5. Respondents Nos. 1 and 2 filed joint written statement pleading that deceased has died due to his own negligence by coming in contact with the left side of rear wheel of the trailor, which the respondent No. 1 was driving. As a matter of fact, the deceased was pillion rider at a cycle and due to a speed breaker, the cyclist lost his balance and pillion rider fell on the right side of the cycle and on the left side of the trailor and because of losing the balance, the pillion rider came in contact with the rear wheel of the trailor for which the respondents cannot be held liable under any circumstances and thus there was no negligence on the part of respondent No. 1.

6. Respondent No. 3, the Insurance Company in its written statement has admitted that the offending vehicle was insured with it in the name of respondent No. 2. However, it is stated that driver of the alleged offending vehicle was not holding a valid and effective driving licence and as such the liability cannot be fastened to this respondent.

7. Vide impugned judgment the Tribunal awarded a compensation of Rs. 3,09,400/- with interest @ 6% for a period of two years.

8. It has been contended by the counsel for the appellants that the Tribunal has failed to assess the correct income of the deceased at Rs. 4,000/- per month as stated and proved by the witness on the basis of unrebutted testimony of the appellant No. 1.

9. The Tribunal also failed to consider the amount of compensation on the basis of the statutory multiplier of 18 prescribed for the age group of above 25 years but not exceeding 30 years, in which case the multiplier of 18 ought to have been applied to the proven income of the deceased at Rs. 56,040/- per annum.

10. The other contention is that future prospects in business were not taken into consideration.

11. Lastly, it is contended that the Tribunal by allowing interest for a period of only, two years, that too at a rate of 6% only, has acted against the principles laid down by the Apex Court as well as by this Court in number of cases.

12. On the other hand, it is contended by the counsel for the respondent No. 3-Insurance company that the Tribunal has rightly taken the monthly income of deceased at Rs. 1,800/- per month as per statement of PW3 and there is no infirmity in its order.

13. Further, it has rightly applied the multiplier of 14 in view of the decision of the Apex Court in Sarla Dixit v. Balwant Yadav AIR 1996 SC 1272.

14. In the present case, no documentary evidence regarding age of the deceased has been filed on record by the appellants. However, the age of the deceased at the time of accident was stated to be 29 years.

15. On the other hand, in the post-mortem report Ex.PW-4/6 and MLC Ex.PW4/7, age of deceased has been mentioned as 30 years.

16. In the absence of any other evidence, the age of the deceased was rightly taken to be as 30 years.

17. Regarding monthly income of the deceased, PW4 Hansi Devi, widow of the deceased, has stated that the deceased was earning about Rs. 4,000/- per month whereas, PW3, Goverdhan Singh, has stated that deceased used to tell him that he was earning about Rs. 50-60/- per day and that he also used to keep some holidays in a month.

18. Both these witnesses have orally stated about the income of the deceased, but no cogent evidence to substantiate their statements with regard to earnings of deceased, has been placed on record.

19. The Tribunal with regard to the income of the deceased has held that;

With regard to the profession and income of the deceased also there was no cogent evidence to substantiate the statement of the petitioner Hansi Devi or that of PW-3 Goverdhan Singh. They had orally stated that the deceased was selling stationery and earning Rs. 4,000/- per month. PW-3 Goverdhan Singh in his cross-examination stated that the deceased told him that he was earning about Rs. 50-60/- per day and that he also used to keep some holidays in a month. If that was so, according to this witness, the income of the deceased was Rs. 1,500-1,800/- per month. Thus the income of the deceased can be taken to be Rs. 1,800/- per month.

20. The Trial Court has relied upon the statement of PW-3 and taken the income of the deceased as Rs. 1,800/- per month.

21. However, the best evidence with regard of income of the deceased would be his wife i.e. PW4 Hansi devi. She has categorically stated that her husband was earning about Rs. 4,000/- per month. She denied the suggestion that her husband was earning only Rs. 1,500/- per month.

22. The Apex Court in plethora of cases has held that while assessing the income of the deceased in motor accident cases, the tribunals should bear in mind that the same should be assessed on the basis of the cogent and the reliable evidence produced and duly proved on record.

23. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident, then the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be taken into consideration.

24. Since, no documentary proof with regard to the profession or qualification of the deceased has been filed on record by the appellant, thus, the income of the deceased is taken as that of an unskilled worker.

25. The minimum wages as on the relevant date of accident i.e. 10.05.01 for an unskilled worker were Rs. 2579/- per month.

26. It is well settled proposition that while determining the quantum of compensation, the future prospects are also required to be taken into consideration. Though the claimants have failed to produce any cogent evidence on record, but once the resort has been made to the Minimum Wages Act, therefore, the increase in the future wages under the Minimum Wages Act can certainly be taken into consideration.

27. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Apex Court has observed as under;

Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs. 2000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier.

28. In Smt. Sarla Dixit and Anr. v. Balwant Yadav and Ors. (supra) where the Apex Court followed the decision of Susamma Thomas (supra), has observed as under;

So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the

ascertainment of the multiplicand is a more difficult exercise. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death to the maximum which he would have otherwise got had he not died a premature death and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner.

29. Keeping in view the above said decisions and rising price and inflationary trends, it can be assumed that income of the deceased would have doubled by the time he would have retired from working and thus, the monthly income of the deceased can be taken to be at Rs. 3868.50p. (Rs. 2,579 + Rs. 5,158/- = Rs. 7,737/- divided by 2) and after making 1/3rd deduction towards the personal expenses, the financial dependency of the claimant is assessed at Rs. 2,578/- per month, which is rounded off to Rs. 2,600/- p.m. Thus, the annual loss of income comes to (Rs. 2,600/- x 12) Rs. 31,200/-.

30. As regards to the multiplier, the Apex Court in U.P. State Road Transport Corporation v. Krishna Bala and Ors. 3 (2006) ACC 361 (SC) has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

6. Certain principles were highlighted by this Court in the case of Municipal Corporation of Delhi Vs. Subhagwanti and Others, in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death. "How much has the widow and family lost by the father''s death?" The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd. All ER p. 665 A-B, which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years'' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt.

7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case (supra) and the second in Nance v. British Columbia Electric Railway Co. Ltd. 1951 (2) All ER 448.

8. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In, ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

Further Court held that;

10. In regard to the choice of the multiplicand the Halsbury''s Laws of England in Vol. 34, Para 98 states the principle thus:

98. Assessment of damages under the Fatal Accidents Act 197 and The courts have evolved a method for calculating the amount of pecuniary benefit that dependents could reasonably expect to have received from the deceased in the future. First the annual value to the dependents of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased''s working life at the date of death.

11. As to the multiplier, Halsbury states:

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependents can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependents will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed

rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.

31. The Apex Court in Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and Ors. 2 (2005) ACC 476 (SC) has observed as under;

8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents. Then that should be capitalized by multiplying it by a figure representing the proper number of years'' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the over-all picture that matters" and the court must try to assess as best as it can the loss suffered.

32. Thus, in view of above decisions, the Tribunal has rightly applied multiplier of 14 in the present case. Thus, the total loss of dependency, after applying multiplier of 14, comes to Rs. 4,36,800/- (Rs. 31,200 x 14).

33. Regarding interest, the petition was filed in July, 2001. The issues were framed in August, 2002 but the appellants completed their evidence only in January, 2004. Thus, the Tribunal rightly awarded interest for two years.

34. In view of the above discussion, the award given by the Tribunal is modified to the extent that appellants are entitled to enhanced compensation of Rs. 1,27,400/- (i.e. Rs. 4,36,800/- - Rs. 3,09,400/-) on account of loss of dependency.

35. Appellants are also entitled to interest @ 8% per annum from the date of judgment of the Trial Court (i.e., w.e.f. 11th October, 2004) till realization on this

enhanced compensation only.

36. Accordingly, the present appeal stands allowed to the above extent, with costs.

37. Trial court record be sent back.