

(2009) 08 DEL CK 0391

Delhi High Court

Case No: MAC. App. 836 of 2006 and 884-86 of 2006

Netaji Subhash Inst. of
Technology

APPELLANT

Vs

Alka Ahuja and Others
 Alka
Ahuja and Others Vs Netaji
Subhash Inst. of Technology

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2011) ACJ 370

Hon'ble Judges: J.R. Midha, J

Bench: Single Bench

Advocate: Avnish Ahlawat, in MAC. app. 836/2006 and R.N. Sharma, in MAC. app. 884-86/200, for the Appellant; R.N. Sharma in MAC. App. 836/2006 and Avnish Ahlawat in MAC. App. 884-86/2006, for the Respondent

Final Decision: Allowed

Judgement

J.R. Midha, J.

The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 12,51,500/- has been awarded to the claimants. The appellant in MAC.APP. No. 836/2006 is seeking reduction of the award amount on the ground that deceased was contributory negligent for the accident whereas the appellants in MAC.APP. No. 884-86/2006 are seeking enhancement of the award amount.

2. The accident dated 5th September, 2003 resulted in the death of Krishan Kumar Ahuja. The deceased was survived by his widow, a minor son and mother who filed the claim petition before the learned Tribunal.

3. The deceased was aged 38 years at the time of the accident and was working as Senior Stenographer with Netaji Subhash Institute of Technology, Sector - 3, Dwarka, New Delhi. The accident occurred inside the complex of Netaji Subhash Institute of Technology. On 5th September, 2003, the deceased was driving his two - wheeler scooter while going out of the Institute when he was hit by offending bus of the Institute bearing No. DL-1V-4504 which was coming inside the Institute. The accident occurred on the private road inside the complex. The accident was witnessed by independent eye - witness, Constable Bhim Singh who was on duty near the accident site and he registered the FIR. Bhim Singh reported to the police that he was on duty near the accident site when the mini bus bearing No. DL-1V-4504 hit the scooter driven by the deceased and the deceased was thrown at a considerable distance. Bhim Singh also reported to the police that the accident occurred due to the fast speed and rash and negligent driving of the mini bus by its driver. The driver was apprehended at the spot and a case u/s 279/304A IPC was registered against the driver of the bus. The case was investigated by the police and the charge sheet was filed by the police against the driver u/s 279/304-A IPC. The FIR, site plan and the charge sheet were placed on record before the learned Tribunal. The site plan shows that the accident occurred at Point "A" shown in the site plan and Bhim Singh was on duty at Point "B". The site plan also shows that there is a blind turn at the site of the accident.

4. Bhim Singh appeared before the learned Tribunal as PW-5 and deposed that the offending bus entered the complex and took a turn and hit the scooter which was going out of the complex due to which the scooter was thrown at a distance. The police arrived at the spot and the driver of the bus was arrested by the Investigating Officer and the statement of PW-5 was recorded by the Investigating Officer at the spot. PW-5 further deposed that the accident occurred due to the rash and negligent driving of the bus by its driver.

5. The driver of the bus appeared in the witness box as RW-3 and deposed that the bus was at a slow speed of about 10-15 kms/hr whereas the scooter came from the wrong side at a very high and speed and the accident occurred due to the negligence of the scooterist. Ashok Kumar was the helper on the bus who appeared as RW-2 and deposed that the scooter came from the wrong side at a high speed and hit the bus whereas the bus was at a very slow speed and had just crossed two speed breakers. The appellants produced Sanjeev Chopra, Pharmacist as RW-1 who reached the site after the accident. RW-1 deposed that there was no policeman present at the site and the injured was lying in the pool of blood.

6. The learned Counsel for the appellant has submitted that PW-5 was not present at the site of the accident. The learned Counsel refers to the statement of RW-1, RW-2 and RW-3 in support of this argument. The learned Counsel for the appellant further submits that speed of the bus at the time of the accident was very slow that is about 10-15 kms/hr. The learned Counsel further submits that the bus was on the correct

side and the scooter was on the wrong side of the road.

7. On careful examination of the FIR, site plan, charge sheet, statements of PW-5, RW-1, RW-2 and RW-3 and applying the principles laid down in Section 114 of the Indian Evidence Act, this Court is of the view that the accident occurred due to the rash and negligent driving of the bus by its driver. The accident occurred inside the complex of Netaji Subhash Institute of Technology. Admittedly there was a blind turn and the bus was taking right turn. If the speed of the bus had been 10- 15 kms/hr as stated by RW-3, the accident would not have at all occurred. The natural presumption is that the offending bus was being driven at a very high speed and that the driver of the bus did not take due care and caution. The statement of RW-3 that the bus was being driven at a very slow speed is incorrect. RW-1, RW-2 and RW-3 have made false statements on oath that there was no policeman at the spot. Admittedly, the FIR has been registered on the report of PW-5. PW-5 was also examined by the police as a witness and the charge sheet has been filed by the police against the driver of the bus. There is no evidence on record that the road where the accident occurred was meant only for moving of traffic in one direction. PW-5 is independent witness posted at a place of the accident and is a public officer. The testimony of PW-5 is, therefore, accepted and it is held that the accident occurred due to the rash and negligent driving of the bus by its driver. The finding of the learned Tribunal contributing 20% negligence to the deceased is set aside.

8. The learned Counsel for the appellant also challenges the quantum of compensation awarded to the claimants on the ground that the monthly emoluments in the form of family pension received by the claimants be deducted from the income of the deceased while computing the compensation. It is submitted that the claimants are receiving family pension of Rs. 4,452/-. The learned Counsel submits that if the future prospects have to be taken into consideration then the family pension and other benefits to the claimants be deducted while computing the compensation. In this regard, it is noted that the principles for computation of compensation and the future prospects are well settled by the recent judgment of the Hon'ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), and no deduction on any account including family pension is permissible according to the said judgment. The ground raised by learned Counsel for the appellant in this regard is, therefore, rejected.

9. There is merit or substance in MAC.APP. No. 836/2006 which is dismissed.

10. The claimants are seeking enhancement of compensation in MAC.APP. No. 884-86/2006. The deceased was aged 38 years at the time of the accident and was working as a Senior Stenographer with Netaji Subhash Institute of Technology earning Rs. 10,560/- per month. The learned Tribunal added 50% towards future prospects and deducted 1/3rd towards personal expenses of the deceased and applied the multiplier of 12 to compute the loss of dependency at Rs. 15,20,640/-. Rs. 35,000/- has been awarded towards loss of consortium, loss of love and affection

and funeral expenses. The total compensation awarded is Rs. 12,51,500/-.

11. The learned Counsel for the appellant is seeking enhancement on the following grounds.

(i) The multiplier be enhanced from 12 to 15.

(ii) The compensation be awarded for loss of estate.

(iii) The deduction of 20% towards contributory negligence be set aside.

12. With respect to the contributory negligence, it has already been held that the driver of the offending bus was rash and negligent. The deduction of 20% towards contributory negligence of the deceased is, therefore, set aside. With respect to the multiplier, the Hon'ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), has held that the appropriate multiplier at the age of 38 years is

13. The multiplier is, therefore, enhanced from 12 to 15. The loss of dependency by applying the multiplier of 15 is computed to be Rs. 19,00,800/- [(Rs. 10,560 + 50% of Rs. 10,560) x 2/3 x 12 x 15). The learned Tribunal has not awarded any compensation towards loss of estate. Rs. 10,000/- is awarded towards loss of estate. The total compensation payable to the claimants is computed to be Rs. 19,45,800/- (Rs. 19,00,800 + Rs. 35,000 + Rs. 10,000).

14. The MAC.APP. No. 884-86/2006 is allowed and the award amount is enhanced from Rs. 12,51,500/- to Rs. 19,45,800/- along with interest @ 7.5% per annum.

15. The enhanced award amount along with interest be deposited by the appellant in MAC.APP. No. 884-86/2006 with the learned Tribunal within 30 days. Upon such deposit being made, the learned Tribunal shall disburse the same to the claimants in the mode and manner as per the original award.

16. Copy of this order be given "Dasti" to learned Counsel for the parties under the signature of Court Master.