(2003) 1 ACC 70 : (2003) 2 CivCC 459 : (2002) 101 DLT 396 : (2003) 66 DRJ 67 : (2003) 1 RCR(Civil) 629

Delhi High Court

Case No: FAO. No. 233 of 1987

Swaran Kanta Seth and Others		APPELLANT
	Vs	
Vijay Aggarwal and Others		RESPONDENT

Date of Decision: Oct. 25, 2002

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (2003) 1 ACC 70 : (2003) 2 CivCC 459 : (2002) 101 DLT 396 : (2003) 66 DRJ 67 : (2003) 1 RCR(Civil) 629

Hon'ble Judges: A.K. Sikri, J

Bench: Single Bench

Advocate: O.P. Goyal, for the Appellant; Nemo, for the Respondent

Judgement

A.K. Sikri, J.

This appeal is filed by the appellants u/s 110-A of the Motor Vehicles Act, 1939 against the judgment dated 20th May, 1987 passed by Sh. S.M. Gupta, Judge, MACT in Suit No. 157/80. That suit was filed by the appellants herein, who are the legal heirs of deceased Sh. Om Prakash Seth. Sh. Om Prakash Seth died in an accident and by the aforementioned suit, the appellants had claimed compensation to the tune of Rs. 10 lacs. By the impugned judgment, the learned Judge, MACT awarded compensation of Rs. 2,08,000/- with simple interest at the rate of 9 per cent per annum from the date of petition till payment. The appellants are not satisfied with the amount of compensation awarded, and Therefore, have filed the present appeal for enhancement of the compensation.

2. The deceased was an Advocate who died in a road accident. On 25th April, 1977, at about 5.50 PM the deceased was going from his residence to his office on his

two-wheeler scooter bearing No. DHE-7005 which he was driving himself. When he was crossing the road-crossing near Patel Chest Institute and had crossed 3/4th of the crossing, keeping to his left side of the road going from Vijay Nagar side, towards Delhi University a car No. DHD-2823 which was being driven by the respondent No. 1 came from Miranda House side and violently hit the scooter being driven by the deceased. In the process the accident caused fatal injuries to Sh. Om Prakash Seth who ultimately succumbed to those injuries. The fact that the respondent No. 1 was driving the car rashly and negligently has been proved and the learned Judge MACT has recorded the findings to this effect on issue No. 2. The respondents 2 and 4 were the owners of the car and the respondent No. 3 is the Insurance Company which had insured the offending vehicle.

3. Since there is no appeal filed by the respondents, the only question which is to be determined in this appeal is the validity of the judgment in so far as it relates to the quantum of claim awarded by the learned Judge, MACT.

4. While computing the amount of Rs. 2,08,000/- the learned Judge, MACT has arrived at the annual income of the deceased at Rs. 20,000/- out of which Rs. 7,000/- was taken as his own expenses and his contribution to the family was calculated at Rs. 13,000/- per annum. Using the multiplier of 16, the amount of Rs. 2,08,000/- was arrived at.

5. The learned counsel for the appellants submitted that the learned Judge, MACT has erred on three counts. Firstly, in accepting the annual income of Rs. 20,000/- which is on lower side and it should have been Rs. 5,000/- per month, i.e. Rs. 60,000/- per annum. Secondly, the multiplier of 27 ought to have been used instead of multiplier of 16, considering the age of the deceased. Thirdly, it is stated that interest at the rate of 12 per cent per annum should have been awarded instead of 9 per cent per annum.

6. Nobody appeared on behalf of the respondents at the time of arguments. Before adverting to the submissions made by the learned counsel for the appellants, few material facts may be noticed.

7. It is not in dispute that the deceased Sh. Om Prakash Seth was practicing as an advocate and was taxation consultant. He was 48 years of age. The learned Judge, MACT has recorded a finding of fact that there was a history of longevity of life in the family. The appellants had contended that the deceased was earning Rs. 2,700/- per month. However, the learned Judge, MACT found that as per Ex.PW-12 the annual income of the deceased was Rs. 2,000/- per month. The appellant No. 1, the widow the deceased, appearing as PW-16 had although stated that her husband was Rs. 2,000/- to Rs. 3,000/- per month, the learned Judge, MACT noted that prior to framing of issues she had given the income of her husband as Rs. 2,000/- per month and further that the deceased used to give her Rs. 1,500/- per month for the household expenses. From this the learned Judge, MACT arrived at the finding that the annual income of the deceased was around Rs. 20,000/-.

8. In view of the aforesaid evidence and also that this taxable income of the deceased of Rs. 20,000/- annually was on the basis of the income statement for the assessment year 1977-78, findings of the learned Judge, MACT that at the time of his death, the deceased"s annual income of Rs. 20,000/- cannot be faulted with. However, learned counsel for the appellants argued that for the purpose of computing compensation the future prospects of deceased should have been taken into consideration and the income ought to have been taken at Rs. 5,000/- per month. In support of this submission, the learned counsel contended that the deceased being an advocate, it is common knowledge that professionals like the advocates start earning substantially after reaching the age of 50 years and when there was evidence of the income of the deceased increasing steadily, the learned Judge, MACT ought to have taken into consideration the possible future increase in income of the deceased. In support of this submission, the learned counsel relied upon the judgment of this Court in the case of Shakuntala Garg v. Megh Raj reported in 2001 ACJ 354. He also relied upon another judgment of this Court in the case of Dr. Nagendra Ghosh Gupta and Anr. v. Lekhi Ram and Ors. reported in . In the later case where the victim of accident was a lady Doctor the court noticed that she had just started her own private clinic and had earned around Rs. 25,000/- in four months as per income tax certificate proved on record. However, while awarding average income of Rs. 15,000/- per month was taken keeping in view the future prospects. The court observed:

"Para 3:.....She would have naturally earned much more in the days to come being a trained gynaecologist. Her practice would have grown on her gaining more experience.

Para 4: It is also a matter of common knowledge that health care provided by the State leaves much to be desired and as a result patients are constrained to throng private clinics and seek private treatment. Therefore, given regard to the prevailing state of medical affairs it is not difficult to assess that the deceased could have earned an average income of Rs. 15,000 after a year or so and her dependency could be safely put at Rs. 10,000. It is also apparent on the face of record that M.A.C.T. had applied an inadequate multiplier in the facts and circumstances of the case. Considering that admitted age of the deceased was 30 years, multiplier applied ought to have been 18 in the light of guideline contained in the Schedule under Motor Vehicle Act."

9. Similarly, the Punjab & Haryana High Court in the case of B.D. Gupta v. R. Rani reported in 2001 AIHCC 1625 enhanced the compensation to Rs. 11,97,000/- payable to the parents of the deceased aged 23 years who was working as MBBS Internee and was getting Rs. 2,000/- per month. It took into consideration the prospects of future increases and thus the income of Rs. 12,000/- per month and calculated the dependency loss suffered by the appellants at the rate of Rs. 8,000/- per month for 12 years and awarded a sum of Rs. 11,97,000/- with interest as compensation. The father of the deceased had retired as Medical officer and the mother of the deceased was two to three years younger to her husband when their son died in the accident.

10. A Division Bench of this court in the case of Arun Sondhi v. Delhi Transport Corporation reported in 91 (2000) DLT 17 took into consideration the future earnings anything and was a B.A. final year student aged about 21 years.

11. Keeping in view the aforesaid legal position, I am of the considered view that the leaned Judge, MACT committed an error in restricting the income of the deceased for the purpose of determination of compensation to Rs. 20,000/- per annum which he was earning at that time. The learned counsel for the appellants was right in his submission to the effect that the deceased being an advocate had better future prospects and he was approaching a stage in his life where he could have achieved quantum leap that would have enabled him to earn substantially more than he was earning at the time when he met with the accident. Therefore, for the purpose of compensation, the average future earning of the deceased could safely be fixed at Rs. 40,000/- annually. After deducting 1/3rd there from, i.e., Rs. 13,000/- per annum which the deceased would have spend on himself, it can conveniently be stated that the deceased would have contributed a sum of Rs. 27,000/- per annum for the family.

12. In so far as multiplier is concerned, the learned Judge, MACT has itself observed that there was a history of longevity of life in the family. Keeping that in mind multiplier of 16 as used by the learned Judge, MACT appears to be inappropriate. It is a matter of common knowledge that there is no age of retirement for the professionals like advocates who not only continue to practice at their advanced stage, they even earn more at that stage. Therefore, it can easily be concluded that the deceased could have practiced at least for another 20 years and multiplier of 20 can appropriately be applied in his case. Calculated in this manner, the compensation would work out to Rs. 5,40,000/- (Rs. 27,000/- x 20).

13. The learned Judge, MACT has not awarded any amount on account of pain and suffering suffered by the appellants due to sudden and untimely death of Sh. Om Prakash Seth in the said accident. The courts have recognised the principle of awarding compensation for pain and suffering suffered by next kin of the injured on account of accident. (Refer: Spring Meadows Hospital v. Harjol Ahluwalia). In this case the court had ordered payment of Rs. 5 lacs to the parents of the injured child who had suffered injuries due to negligence of the doctors.

14. Keeping in view the fact that the accident in this case occurred in the year 1977, I am of the opinion that ends of justice would be met if the appellants are awarded a sum of Rs. one lac on this count.

15. In so far as award on interest is concerned, the demand of the appellants claiming interest at the rate of 12 per cent per annum appears to be reasonable keeping in view the interest rates which prevailed at that time. However, keeping in view today"s interest rates, future interest would be restricted to 9 per cent. Thus, the order of the learned Judge, MACT would stand modified in this respect as well by awarding interest at the rate

of 12 per cent per annum with effect from the date of filing of petition till the date of this order and future interest at the rate of 9 per cent per annum.

16. The order of the learned Judge, MACT, thus, stands modified and instead of compensation of Rs. 2,08,000/- as awarded by the learned Judge, MACT the appellants shall be entitled to the following compensation.

"Rs. 6,40,000/- with interest at the rate of 12 per cent per annum from the date of filing of the petition till the date of this order and interest at the rate of 9 per cent per annum from the date of this order till the payment."

17. The appellants shall also be entitled to cost in this appeal quantified at Rs. 5,000/-.

18. The appeal stands disposed of accordingly.