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Court : Delhi

Decided On : Aug-09-1995

Reported in : I(1996)ACC238; 1997ACJ87; 59(1995)DLT752

Judge : C.M. Nayar, J.

Acts : Motor Vehicles Act - Sections 110-A, 110-B and 110-F; [Fatal Accidents Act, 1855](#) - Sections I-A

Appeal No. : First Appeal No. 285 of 1981

Appellant : Gulsharan Kaur and anr.

Respondent : Surinder Singh and anr.

Advocate for Pet/Ap. : A.S. Chandhiok,; Rajiv Mehra,; S.C. Dhanda and;

Judgement :

C.M. Nayar, J.

(1) The present appeal arises from the Award dated April 16, 1981 passed by ShriS.P. Saberwal, Judge, Motor Accidents Claims Tribunal, Delhi. The appellants are the legal representatives of the deceased Bhagwan Singh and filed the claim petition under Section 110-A of the Motor Vehicles Act claiming compensation of Rs. 3,00,000.00 on account of fatal injuries sustained by the deceased in the motor accident that took place on February 3, 1977 at about 9.30 p.m. at

Wazirabad Bridge within the jurisdiction of Police Station Seelampur. The deceased Bhagwan Singh was coming on his Rajdoot Motor Cycle bearing No. DEC-2142 from the Western side of Wazirabad bridge over river Jamuna and was proceeding towards Shahdara side. He had crossed more than half of the bridge when Surinder Singh, respondent No. 1 herein, who was driving the offending truck bearing No. HRA-1705 was seen coming from the opposite direction at a very fast and reckless speed. The deceased, it was alleged, was going on his left side of the road and was driving his motor cycle at a slow speed. Respondent No. 1 suddenly swerved the truck towards his right and deceased tried to move to his left but the truck came to the extreme right i.e. on the wrong side of the road and hit the motor cycle of the deceased who was knocked down by the right side of the truck. As a result of the impact, the deceased was killed on the spot.

(2) The deceased was a young man of 25 years of age and was M.Sc. in Bio-Chemistry and obtained first class first in M.Sc. examination He joined Punjab and Sind Bank and had also passed C.A.I.I.B. Bank examination and was due for further promotion at the time of accident. He was drawing a salary of Rs. 1,200.00 per month and at the relevant time was posted in Punjab & Sind Bank, Naraina, New Delhi. He was the eldest son and supporting member of the family and the appellants were all dependent upon him. The appellants suffered mental shock, strain due to this sudden and untimely demise of the deceased. In this background, the compensation for the sum of Rs. 3,00,000.00 was claimed by them.

(3) The claim was resisted by respondent No. 1 and respondent No.2, M/s National Insurance Co. Ltd. and they filed joint written statement wherein it was pleaded that the truck was being driven at a slow speed on the correct side of the road. The deceased came from the opposite direction at a tremendously fast speed. A car was going in front of the said motor cycle. The deceased accelerated the speed in order to overtake the said car and came on the wrong side and struck against the right front mudguard of the truck. The accident was thus caused due to negligence (if the deceased).

(4) The following issues were framed on the pleadings of the parties :

1. Did the death of Shri Bhagwan Singh deceased take place in the accident on February 3, 1977 due to rash and negligent driving of truck No. HRA-1705 by respondent No. 1? 2. To what amount of compensation, if any, are the petitioners entitled and from whom? 3. Whether the petitioners are legal representatives of the deceased? 4. Relief. The learned judge first disposed of issue No. 3 and considered whether appellants 2 to 4, who are major brothers of the deceased, and appellants 5 and 6, who are the minor brother and sister at that time, could be held to be dependents and legal representatives of the deceased and, as such, entitled to claim compensation in the present case. He referred to the provisions of law in this regard particularly to Section 1-A of the [Fatal Accidents Act, 1855](#), wherein it is stated that suit for compensation could be filed for the benefit of the wife, husband, parent and child, if any, of the person whose death was so caused and shall be brought by and in the name of the executor, administrator, or representative of the person deceased. The learned Judge held that even minor brothers and sisters who are actually maintained by elder brother, are not entitled to claim compensation. Therefore, it was held that appellant No. 1 Smt. Gulsharan Kaur, who is the mother of the deceased, is the legal representative and she is only entitled to claim compensation in this case. This finding was based on interpretation of law as laid down in the judgment of this Court as reported in *Dew and Hari Chand and Others v. Municipal Committee of Delhi and Others*, Air 1981 Delhi 71.

(5) The learned Counsel for the appellant contends that the Tribunal has taken an erroneous view of the settled position of law and it is liable to be set aside in this appeal. He has referred to the judgment of the Supreme Court as reported in *Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Another*, : [1987]3SCR404 and has particularly relied on paragraph 11 to reiterate that in an Indian family, brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the [Fatal Accidents Act, 1855](#) which has since been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. The above said paragraph may be reproduced as

follows:

'WE feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the [Fatal Accidents Act, 1855](#) which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in *Megjibhai Khimji Vira v. Ghaturbhai Taljabhaci.* : AIR1977 Guj195 (supra) and hold that the brother of J person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.'

In view of the settled position of law, the learned Judge in the present case was in error in holding that appellant No.1 who is the mother of the deceased was only entitled to claim compensation in this case. It is, accordingly, held that the claim petition filed by all the appellants, which included brothers and sisters including one minor brother and minor sister, was maintainable and they were entitled to claim compensation as a result of the accident.

(6) The question of negligence was considered in issue No.1 and the learned Judge, on appreciation of evidence, held that the fatal injuries sustained by the deceased were due to rash and negligent driving of truck No. HRA-1705 on the part of respondent No. 1. I have heard learned Counsel for the parties and perused the evidence on record.

(7) The accident was watched by the eye witnesses who were present at the spot. These witnesses have clearly deposed that the deceased who was driving his motor cycle was going on correct side at a slow speed whereas the truck was being driven at a very fast speed and in a rash and negligent manner and had come on the wrong side of the road and struck against the motor cycle of the deceased. The testimony of PW1 Kuldeep Singh and PW2 Brij Pal Singh was accepted and it was held that the evidence did not suffer from any material inconsistency or contradictions on the basis of which it could be discarded. The presence of eye witnesses was corroborated by Investigating Officer who was an official witness and deposed in that manner. There was absolutely no motive or ill-will on the part of witnesses to depose falsely against respondent No. 1. In this situation, the finding of the Tribunal cannot be assailed and the same is, accordingly, affirmed.

(8) The question now arises as to what amount the appellants are entitled to compensation as a result of the death of Bhagwan Singh who was aged 25 years at the time of accident. He was highly qualified as he had done M.Sc. in Bio-Chemistry and obtained first class first in that examination. He joined Punjab & Sind Bank as an officer and also passed the Banking examination and was due for further promotion at the time of accident. The deceased was drawing a salary of Rs. 1,200.00 per month as an officer in the said Bank. The Tribunal accepted the age of the deceased to be 25 years at the time of accident it was also not in dispute that longevity of life was cut short due to the death in the accident and the normal span of human life in India these days is expected to be between 65 years to 75 years. This assessment was based on the decision of the Supreme Court as reported in Smt. Manjushri Raha and Others v. B.L. Gupta and Others, : [1977]2SCR944 and the Tribunal held that it would not be reasonable to expect that the deceased would have lived up to the age of 65 years, if not more, if he

had noted in the aforesaid accident.

(9) The total emoluments of the deceased were assessed at Rs. 1,323.00 per month and it was noticed that appellant No.1, mother of the deceased, deposed that she used to receive a sum of Rs. 500.00 to Rs. 600.00 per month through money order or by Bank Draft. The Tribunal assessed the carry-home salary of the deceased at Rs. 732.00 per month and fixed the dependency at Rs. 300.00 per month i.e. Rs. 3,600.00 per annum. The multiplier of 16 years was used as a suitable multiplier and the appellant No. 1 was held entitled to a sum of Rs. 57,600.00. The Tribunal deducted ten percent of the amounts received by appellant No 1 towards deposit in Bank (Rs. 5,000.00, Provident Fund (Rs. 712.20) and Gratuity (Rs. 950.00) i.e. Rs. 666.00. The amount of Group Insurance and Ex-gratia payment in the sum of Rs. 10,000.00 and Rs. 2,500.00 respectively further reduced the compensation to Rs. 44,434.00. The learned judge also made deduction of 10 per cent for lump sum payment and assessed the award of compensation to appellant No. 1 at Rs. 39,990.00.

(10) The award of compensation in the present case is very much on the lower side as the considerations, which have been adopted by the Tribunal, cannot be held to be valid in law and in the facts and circumstances of the present case. The deceased was young man of 25 years and was highly qualified and holding the post of an officer in the nationalised bank. The mother of the deceased, appellant No. I, has categorically stated that the deceased was contributing a sum of Rs. 500.00 to Rs. 600.00 per month. This averment was brushed aside merely on the ground that she was not able to produce any money order coupon or document to substantiate her oral version. This cannot be held to be cogent ground to disbelieve the testimony of appellant No.1 as the deceased was reasonably well-placed in his life and there was no cross-examination to the averment made by the said appellant. The determination of the quantum 'must be liberal, not niggardly since the law values life and limb in a free country in generous scales.' (M/s Concord of India Insurance Co. Ltd. v. Nirmala Devi and Others, 1980 A.C.J. 55.

(11) There is no material on record to discard the statement of appellant No.1 to the effect that the deceased was contributing a sum of Rs. 500.00 or Rs. 600.00

per month. The deceased was an officer in the Bank and his income was admittedly Rs. 1,323.00 per month. The Supreme Court in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Others*, 1994 Acj I has held that future prospect and advancement in life and career should be sounded in terms of money to augment the multiplicand. In that case the deceased was 39 years of age and was drawing Rs. 1,032.00 per month. The Court took note of the prospect of advancement in the future career and estimated the monthly income of the deceased at Rs. 2,000.00 as the gross income. After deducting the usual amount for personal expenses, the dependency was assessed at Rs. 1,400.00 or Rs. 17,000.00- per year as the loss of dependency and by using a multiplier of 12 as appropriate to the age of the deceased, the compensation was assessed at Rs. 2,04,000.00.

(12) In the present case, the deceased was a Bank officer and well qualified. The income of officers, similarly placed, has substantially improved over the years. In this background and taking into account the prospect of advancement in future career, it will be reasonable to assess the higher estimate of monthly income at a minimum figure of Rs. 2,500.00. There is no doubt that the deceased was likely to get married in due course and the contribution to the mother would certainly have been affected as a result of the same. thereforee, in the facts and circumstances of the present case, a sum of Rs. 1,000.00 per month or Rs. 12,000.00 per year can be fixed as the loss of dependency. The multiplier of 16, which sounds appropriate to the age of the deceased and has not seriously been contested before me in this appeal, wouldworkoutthecompensationatRs. 1,92,000.00 (Rs. 12,000.00 x 16).TheTribunal further erred in making deductions for lump sum payment as well as in respect of Provident Fund, Gratuity and Insurance etc. as there arc no longer held to be valid deductions in view of the settled position of law, as referred to in the judgments of the Supreme Court in *Hardeo Kaur and Others v. Rajasthan State Road Transport Corporation and Another*, 1992 Acj 3CO and *Urmilla Pandey and Others v. Khalil Ahmad and Others*, : [1994]3SCR1001 .

(13) The question now arises as to what amount each of the appellants shall be entitled to. The appellant No. I, who is mother of the deceased and is yet to cater

for appellant Nos. 5 and 6 who were minor at the time of accident and are unmarried as stated by learned Counsel for the appellants is required to be granted more than the other claimants. In the present facts, appellant No. 1 is held entitled to 50 per cent of the awarded amount. The remaining appellants 2 to 6 shall be entitled to the balance amount in the extent of 10 per cent each.

(14) The appellants-claimants are accordingly held entitled to the sum of Rs. 1,92,000.00 in the proportion, as indicated above. The said amount shall carry interest at the rate of 15 per cent per annum from the date of petition till realisation. This will take into consideration the amount which has already been disbursed to the appellant No.1 in working out the amount, now held payable. The appeal is allowed with costs, which are quantified at Rs. 5,000.00.

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