

Sudarshan Devi Vs. Mohd. Yasin

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Court : Delhi

Decided On : Aug-01-1997

Reported in : II(1997)ACC268; 1998ACJ1212; 1997IVAD(Delhi)1021; 68(1997)DLT122; 1997(43)DRJ309; (1998)118PLR51

Judge : Devinder Gupta and; K.S. Gupta, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A

Appeal No. : Letters Patent Appeal No. 69 of 1989

Appellant : Sudarshan Devi

Respondent : Mohd. Yasin

Advocate for Pet/Ap. : S.C. Nigam, Adv

Judgement :

Devinder Gupta, J.

(1) This is an appeal against the judgment dated 4.8.1989 of learned Single Judge in Fao 79/80 - Sudarshan Devi and another v. Mohd. Yasin and others - dismissing the appellants' appeal and thereby affirming the order of Shri B.L. Garg, Presiding Officer, M.A.C.T., Tis Hazari Courts, Delhi in Case No.62/82 by which the Claims Tribunal had dismissed the claim petition under Section 110-A of the Motor Vehicles Act, 1938. The facts in brief are that on 18.3.1982 a claim petition

under Section 110-A of the Motor Vehicles Act, 1938 was preferred by the appellants being the widow and son respectively of one Bhagwan Dass Taneja son of Kala Ram Taneja, residing at Sector 6, Quarter No.174, R.K. Puram, New Delhi, claiming a sum of Rs. 2 lacs towards the compensation for the death of Bhagwan Dass Taneja, who was stated to have expired in a fatal accident on 13.12.1981. It was alleged that on 13.12.1981 the deceased was going on his cycle to ward his house when he was hit by a Matador Van bearing No.DEG 7860 on Palam Marg, Near Vasant Vihar D.T.C. Bus Depot at about 6.00 P.M. The Matador Van owned by respondent No.2 was being driven rashly and negligently and with great speed without due care and without horn by its driver Mohd. Yasin, respondent No.1. After the accident, respondent No.1 took the deceased along with his cycle in Matador Van towards Palam Airport and later took the Matador Van along with the body of the deceased and cycle to Jhandewalan Extension, New Delhi. Leaving the body in the Matador Van, respondent No.1 absconded. The police captured the abandoned Matador at Jhandewalan Extension, New Delhi. The dead body was brought for post-mortem on 17.12.1981. Till then it was lying unidentified. Post-mortem was conducted on 17.12.1981. Deceased, who was about 54 years of age maintained good health and was to remain in service for another five years since he was due to retire on 31.3.1986. Widow of the deceased and major son claimed a sum of Rs. 2 lacs towards compensation along with interest thereon. Respondent No.3, New India Assurance Co. Ltd., was also arrayed as a party since vehicle in question at the relevant time was insured with it.

(2) Claim petition was resisted by respondents 2 & 3, who filed their replies separately. It was denied that the vehicle in question was concerned or connected in the accident or that the accident occurred due to rash and negligent driving of the vehicle by respondent No.1. It was stated by respondent No.2 that he had wrongly been implicated in the case. No such accident occurred with the vehicle in question. The Company claimed that the claim for compensation was beyond statutory limit of liability which under the Motor Vehicles Act, 1938 and in terms of the policy was limited only to Rs.50,000.00 . It was also claimed that respondent No.1 was driving the vehicle without a valid driving licence. Jagmohan Rai was impleaded as respondent No.4, who claims to be the eldest son of the deceased

and in his reply he claimed that out of compensation he be awarded a sum of Rs. 1 lac along with interest thereon. The following issues were framed by the Claims Tribunal on 15.3.1983:

'1. Whether Sh. Bhagwan Dass Taneja died as a result of rash and negligent driving of vehicle No.DEG-7860 by respondent No.1? 2. Whether petitioners are L.Rs. of deceased? 3. Whether liability of Insurance Company is limited? If so, to what extent? 4. Whether petition is bad in view of preliminary objections raised in W.S. of Insurance Co.? 5. To what amount of compensation are petitioners entitled and from whom? 6. Relief.'

(3) On 15.11.1983 two more additional issues were framed by the Tribunal. They are as under:

'WHETHER the claim of respondent No.3 is time barred? 2. Whether the respondent No.4 is also entitled to compensation? If so, to what amount of compensation and from whom?'

(4) The Claim petition was dismissed by M.A.C.T. on the ground that the claimants failed to prove by cogent evidence that the accident occurred as a result of rash and negligent driving of the Matador Van driven by respondent No.1. In appeal learned Single Judge also, on appreciation of evidence, concluded that the Tribunal had rightly disbelieved the testimony of witnesses and its conclusion that there was no evidence to the effect that accident was the result of rash and negligent driving of the offending vehicle by respondent No.1 is unassailable. Appeal accordingly was dismissed. It is this judgment of learned Single Judge, which is under challenge in this Letters Patent Appeal. Appeal was admitted for hearing and show cause notice was issued to the respondents, who failed to put in appearance despite service. Order of admission is dated 19.8.1993. It was taken up for regular hearing after actual date notices were sent to the respondents. Despite sending such notices, nobody appeared for the respondents. We heard learned counsel for the appellant and been taken through the entire record.

(5) The Claims Tribunal as also the learned Single Judge considered the statement of Public Witness 6, Ashok Gujar, who had deposed that at the time of

accident he was coming from R.K. Puram side and was proceeding towards Moti Nagar on his two-wheeler scooter via R.K. Puram road and when he reached D.T.C. Depot, Vasant Vihar, he noticed a cyclist coming from opposite side and a Matador Van coming behind the cyclist. According to him, Matador Van was being driven at a fast speed as a result of which it struck against the cyclist and the cyclist sustained injuries. He further stated that the driver of Matador Van put the injured as well as his cycle in the Matador Van with a view to take him to hospital. In cross-examination he stated that it had become dark when accident took place. His attention towards place of accident was only attracted after he heard the impact and according to him, Ashok Kumar appellant No. 2, the son of the deceased was known to him prior to the accident and he had already disclosed these facts to Ashok Kumar two months prior to the date of making of the statement. There being no other eye witnesses the Tribunal as well as the learned Single Judge observed that this witness could not be relied upon since the facts regarding accident were for the first time disclosed by him more than three years after the accident. In normal circumstances, had he seen the accident, he would have stopped and proceeded towards the scene of accident and tried to ascertain as to what had happened. He could have also informed the police and somebody else about the accident. Disbelieving him, both learned Single Judge and the Tribunal, concluded that there was no evidence to the effect that the accident was as a result of rash and negligent driving of the offending vehicle driven by respondent No.1.

(6) Learned counsel for the appellant has vehemently contended that the most vital evidence, which was available on record coupled with the other circumstances produced and proved on record of the Claims Tribunal have been ignored by learned Single Judge as also by Claims Tribunal thereby resulting in incorrect conclusions. Our attention has been drawn to document, Ext. Public Witness 1/1, copy of Fir 286/81 of Police Station Vasant Vihar dated 13.12.1981. It was proved by Public Witness 1 Head Constable Dilawar Singh, No.7139, Police Station Vasant Vihar, South District, New Delhi. This Fir was registered on the basis of D.D.No.11-A dated 13.12.1981 recorded at 7.45 P.M. which in turn was recorded as per the information received on telephone from P.C.R. and at about 6.10 P.M. on 13.12.1981. As per the information received on phone, which

resulted in registration of aforementioned Fir for offence under Section 279/337/201/304-A of Indian Penal Code, Matador Van No.DEG 7860 was involved in an accident. A cyclist was hit by the Matador Van on main Vasant Vihar Road, Opposite D.T.C. Bus Depot, where the informant Pcr personnel found pieces of glass and coagulated blood. Leaving a Constable to guard the site, effort was made to get hold of some eye witnesses and the vehicle. Neither eye-witness could be found, nor the vehicle could be traced except information that the Matador Van driver after putting the injured and his cycle in the Van No.DEG 7860 had taken it towards Palam Airport via Palam Marg. Enquiries were made from the hospital. No information was available as regards the injured. Wireless messages were stated to have been flashed to trace the driver and the vehicle.

(7) Our attention has further been drawn to the post-mortem report NO.1304/81, Ext. Public Witness 3/1. The same was proved by Public Witness 3 Chander Kant, Lecturer, Department of Forensic Medicines, Aiims, New Delhi. According to him, on 17.12.1981 he conducted the post-mortem examination of the body, which was brought and identified by one constable Rameshwar Singh and Mahender Singh, both of Police Station Vasant Vihar. The post-mortem report further records that the body was of an individual, who was going on a cycle, was hit by a Matador Van whereas the Van driver ran away with the deceased along with his cycle and left the same near Jhandewalan Extension on 13.12.1981 on the evening and was found dead by the police the same day. Cause of death so recorded as 'shock resulting from head injury and fracture ribs (right). Injuries are stated to be anti-mortem in nature and likely to be caused by application of blunt force causing fall on rough and hard surface. In the opinion of the doctor death had taken place 3 or 4 days prior to the date of examination.

(8) The statement of Public Witness 5, the son of deceased, was also discarded by learned Single Judge as well as by the Tribunal on the ground that the version given by the said witness was highly improbable.

(9) Assuming that Aw 6 Ashok Gujara could not be believed what he says that he witnessed the actual accident on 13.12.1981 at 6.00 P.M. but the circumstances do suggest, on perusal of two documents proved on record that the body found by

the police in Matador Deg 7860, which admittedly is owned by respondent No.2, and insured at the relevant time with respondent No.3 was examined by the Doctor, who conducted post-mortem on the body and gave his opinion. At or near to the time of accident a cyclist had been hit by Matador Van Deg 7860. Both these documents were not at all noticed by the learned Single Judge and by the Tribunal. Respondent No.2 has had an opportunity but failed to explain the circumstances under which body of an individual was recovered from the van in question. It was for respondent No.2 to have explained the circumstances leading to the recovery of the body in his vehicle. No effort was made to examine respondent No.1 the driver also. In these circumstances, an inference deserves to be drawn that the deceased was hit by Matador Van driven by respondent No.1 and the very fact that the body was found at considerable place from the site of accident the same in the absence of any Explanationn would lead us to believe that the cause of the death as stated on behalf of the appellants stands duly proved.

(10) The deceased was employed in Post & Telegraph Department as Sorting Assistant. His date of birth has not been proved on record in the claim petition his age as on the date of death is stated as 54 years. His son Ashok Kumar appearing as Public Witness 5 has given the age as 52 years at the time of accident. Public Witness 2 Sp Dhimal, who brought the service record was not put any question as regards date of birth of the deceased. However, it is stated in the claim-petition that the deceased was to retire on 31.3.1986. Accident occurred on 13.12.1981. Thus, the deceased was to remain in service for a period of about 4 years. The salary, including allowances, which the deceased was drawing as on the date of death was Rs.988.80 without any deductions. He was staying in allotted Government Accommodation and was not getting House Rent Allowance. There are two claimants only, namely, Ashok Kumar (son) and Sudarshan Devi (widow of the deceased).

(11) In General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others, : AIR 1994 SC1631 , the Supreme Court observed that 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. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, 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 dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase. 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 overall picture that matters' and the court must try to assess as best as it can the loss suffered. It was further held that multiplier method is logically sound and legally well established. There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies v. Powell*, 1942 AC 601 and the second in *Nance v. British Columbia Electric Supply Co. Ltd.*, 1951 AC 601. 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.

(12) Neither the Claims Tribunal, nor learned Single Judge proceeded to determine the amount of compensation payable to the appellants. Accordingly, on the aforementioned principles, we proceed to determine the amount of

compensation since there is an issue framed on that point and the evidence has also been led thereupon. The appellants have not brought on record the relevant facts and circumstances other than the approximate age of the deceased and also the income of the deceased. Assuming a sum of Rs.200.00 to be an amount, which the deceased might be spending upon himself, the remaining amount left with him would be Rs.788.80 p.m., out of which three persons were being maintained. Since it was an amount available to the deceased for being spent on the family, including himself, all of them being adult members, after deducting the share of the deceased, approximately a sum of Rs.500.00 p.m. can be taken to be the amount, which deceased can be said to be accustomed to spend for the benefit of the dependents. Keeping in view the age of the deceased at the time of death and in the absence of any other relevant material, multiplier of 8 can be said to be the most reasonable, which can be applied safely. Dependency being Rs.6,000.00, applying multiplier of 8, the total amount works out to Rs.48,000.00. Adding thereto the conventional amount of Rs.3,000.00 towards loss of estate, total amount of compensation payable to the appellants works out to Rs.51,000.00. This amount has to be apportioned amongst appellant No.1 and appellant No.2. Appellant No.1, being widow, and appellant No.2, being the major son, who also got job in place of his father, the amount is directed to be apportioned as Rs.40,000.00 in favor of the widow and Rs.11,000.00 in favor of appellant No.2. Amount is held payable by the respondents jointly and severally. On the amount of compensation, as assessed, the claimants-appellants are also held entitled to interest at the rate of 9% p.a. from the date of filing of claim petition till date of payment. Since liability of respondent No.3 was limited to the extent of Rs.50,000.00, respondent No.3 will satisfy the award by paying to the appellant, out of the awarded amount, a sum of Rs.50,000.00 along with interest thereupon at the rate of 9% p.a. from the date of filing of claim petition till payment.

(13) The appeal in terms aforementioned is allowed with costs. The impugned orders are set aside.