

Bimla Devi and ors. Vs. Savitri Devi and ors.

Bimla Devi and ors. Vs. Savitri Devi and ors.

SooperKanoon Citation : sooperkanoon.com/701141

Court : Delhi

Decided On : Mar-16-1993

Reported in : I(1993)ACC645

Judge : Usha Mehra, J.

Appellant : Bimla Devi and ors.

Respondent : Savitri Devi and ors.

Advocate for Def. : Mr. Gambhir

Judgement :

Usha Mehra, J.

1. Bimla Devi and Ors. have filed an appeal under Section 110-D of the Motor Vehicle Act (hereinafter called the Act) against the judgment of the Motor Accidents Claim Tribunal (hereinafter called the M.A.C.T.) dated 28.2.78. In short the facts of the case are that Pt. Behari Lal died in motor car accident on 14.6.70 at about 7.00 a.m. The deceased was crossing Mehrauli Road on foot on the pedestrian crossing from Raj Nagar side towards South Extension. At that time his son was also accompanying him at some distance. The offending Car No. DLK-7284 driven rashly, recklessly and negligently by Bhim Sen, respondent No. 2, came at a very fast speed from Yusuf Sarai and hit the deceased with the front portion as a result of which he was thrown away and sustained fatal injuries. At

that juncture there was a Red signal, but the respondent No. 2 did not care to stop on the Red signal, instead entered the crossing without caring for the safety of the persons. He did not observe proper look out nor blew horn and thus caused the death of Pt. Behari Lal. Deceased belonged to Village Katiyal, District Ludhiana, Punjab, and had come to Delhi to see his relations.

2. The M.A.C.T. after recording the evidence of the parties assessed the dependency income of the petitioners at Rs. 200/- per month and applied the multiplier of five years, thereafter deducted 15% on account of lump sum payment and uncertainties of life and awarded a sum of Rs. 10,200/-.

3. It is against this impugned award that the present appeal has been filed. Sakirti Devi and Bhim Sen, respondents 1 and 2 also filed appeal and cross objections, both at which were dismissed. Sakirti Devi, Respondent No. 1, is admittedly the owner of the offending car and Bhim Sen, respondent No. 2, was employed by her as the driver. So far as the accident with offending car is concerned that has been proved beyond doubt. The story set up by respondent No. 1 that the offending car was in the garage at the relevant time is beyond the pleading and therefore, the Trial Court rightly did not rely on the same. In the written statement it was not denied that respondent No. 2, Bhim Sen, was driving this car when the accident took place. Even otherwise the driver of the car has not appeared in the witness box, therefore, adverse inference has to be drawn. Had he appeared it would have been proved that at the time of accident he was driving this car which hit the deceased. On the other hand, by an overwhelming evidence, the petitioners have been able to prove that it was the offending car belonging to Sakirti Devi, driven by Bhim Sen, which hit the deceased and ultimately caused his death. The eye witness Naresh Kumar, son of the deceased, appearing as PW-11, testified that he was accompanying his father when this accident took place. Naresh Kumar had not been subjected to cross-examination. His testimony in fact has remained unrebutted on record. Similarly the statement of Gurdev Singh, PW-3, who is not related to the deceased and his family, in fact an independent witness, had also witnessed this accident. He has in fact explicitly and vividly described the accident. According to him there was Red signal at that time, no other vehicle was coming, but the driver of the offending car violated the rules and came there. After the

accident he applied the brake and slowed down the car for a short while but thereafter speeded away. PW-3 infact noted down the car number. He was subjected to lengthy cross examination but nothing has been elicited which could contradict his testimony. Kishan Lal Sehgal, PW-2, is another eye-witness of the accident. He corroborates the statement of Gurdev Singh in material particulars as to how the accident took place. The offending car after hitting the deceased slowed down for a bit and thereafter speeded away. He also testified that there was a Red signal when the offending car came from Mehrauli side crossing the same. His statement was recorded by the police. Their statements appear to be truthful and inspire confidence, coupled with their statements, the statement of Naresh Kumar, PW-11, who was with his father at the relevant time, to my mind, the M.A.C.T. rightly came to the conclusion that it is the offending car in question, driven by Bhim Sen (respondent No. 2) driven rashly and negligently which caused this accident.

4. As regards the dependency income, the M.A.C.T. has not dealt with the income of the deceased, though Jagir Singh, PW-6, Bimla Devi PW-10, as well as Naresh Kumar PW-11, did state about monthly income of the deceased which according to them was between Rs. 1,400/- to Rs. 1,500/- per month. However, the M.A.C.T. without discussing his monthly income came to the conclusion that just and reasonable monthly dependency of the petitioners to be Rs. 200/-. How he arrived at this figure cannot be inferred from the record? Moreover, the M.A.C.T. fell in grave error in observing that the deceased must be spending extravagantly upon himself. These observations are based on no material on record.

5. It is infact nobody's case that the deceased with six minor children and a wife was spending extravagantly on himself. Rather the widow Bimla Devi, appearing as PW-10 and her son Naresh Kumar, PW-11, have categorically stated that the deceased was spending his entire earning on the household expenses. He had three minor daughters and three sons beside wife. Three of his daughters, respondents No. 4, 5 and 6 were married. One of his son was born blind and completely dependent on him. Three daughters of the deceased were in the age group of 8 to 12 years when he died and his two sons were about 14 years of age. Naresh Kumar, PW-11, was 18 years old at the time of his father's death.

therefore, there was no question of his being extravagant. Bimla Devi testified that the deceased used to give his entire earning to her. In this view of the matter, the M.A.C.T. was not justified in assessing the dependency income at Rs. 200/- per month. He in fact fell in grave error in arriving at this conclusion.

6. Similarly the M.A.C.T. erroneously concluded that the age of the deceased was 58 years. Bimla Devi, (PW-10), Naresh Kumar (PW-11), Hans Raj (PW-8), Surinder (PW-9) all of them were closed to Pt. Behari Lai, they have stated that he was between the age of 47 to 48 years at the time of his death. But without any reason, the M.A.C.T. discarded their statements and relied on the inquest report which no one proved on the record. Dr. Ghosh, PW-5, had stated that the age of deceased as 58 years given by him in his report was based on the inquest report furnished by the police. In fact Dr. Ghosh was only to report about the injuries on the body of the deceased. He mentioned the age of the deceased on the information fed by the police. Where from police got the age of the deceased has not been proved. To my mind, the M.A.C.T. could not have relied on the age mentioned in the postmortem report, particularly in view of the unrebutted and uncontroverted statements of Smt. Bimla Devi, Naresh Kumar and others. The M.A.C.T. conclusion regarding the age of the deceased is baseless. Similarly his finding regarding the income of the deceased. On the basis of the statements of PW-10 and PW-11, which statements were not subjected to cross-examination, the M.A.C.T. ought to have held that the monthly income of the deceased was Rs. 1,400/-.

7. Now taking the income of the deceased to be Rs. 1,400/- per month and deducting 1/3rd on account of his personal expenses, the dependency income of the petitioners would come to Rs. 934/- (Rs. 1,400/- less Rs. 466 = Rs. 934/-). From the evidence discussed above it can safely be held that the deceased was about 48 years old at the time of his death. Taking into consideration the longevity in the family of the deceased which has been proved by Smt. Bimla Devi, PW-10, the multiplier of 10 years will meet the end of justice.

8. In order to arrive at the compensation the annual dependency income of the petitioners would come to Rs. 11,208/- (i.e. Rs. 934/- x 12). Applying the multiplier

of 10 years the total compensation would come to Rs. 1,12,0807- (Rs. 11,208 x 10). Mr. Gambhir, Counsel for the respondent contended that deduction @ 15% on account of lump sum payment and uncertainties of life should be allowed. I am afraid this argument does not hold good any more, because with the value of rupee dwindling due to high rate of inflation, there is no justification for making deduction for lump sum payment or for uncertainties of life. Supreme Court has observed that the delay in final disposal of motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demanded years ago less than quarter of its value when it is received after such a long time. In this case the petition was filed in 1970 and hopefully the case is now being decided in March, 1993. therefore, there is no justification .of any deduction on account of lump sum payment of uncertainties of life.

9. For the reasons stated above the award of the M.A.C.T. is modified and it is ordered that the petitioner shall be entitled to recover from respondents 1 and 2 jointly and severally the sum of Rs. 1,12,080/- with interest at the rate of 6% from the date of application till realisation.