

Swaran Kanta and ors. Vs. Chairman, Delhi Transport Corporation and anr.

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SooperKanoon Citation : sooperkanoon.com/709937

Court : Delhi

Decided On : Jul-01-2008

Reported in : 2009ACJ2377

Judge : Kailash Gambhir, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 171

Appeal No. : F.A.O. No. 175 of 1995

Appellant : Swaran Kanta and ors.

Respondent : Chairman, Delhi Transport Corporation and anr.

Advocate for Def. : J.N. Aggarwal, Adv.

Advocate for Pet/Ap. : Ashok Popli, Adv

Judgement :

Kailash Gambhir, J.

1. The present appeal arises out of the award dated 7.4.1995 of the Motor Accidents Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,59,000 along with interest at the rate of 12 per cent per annum to the claimants.

2. The brief conspectus of the facts is as follows:

On 7.12.1984 deceased Madan Lal was driving his two-wheeler scooter bearing registration No. DLV 8104. While he was taking a turn from Rajpur Road towards Boulevard Road at the T-intersection, a bus bearing registration No. DEP 8836, which was being driven in a rash and negligent manner by its driver hit the said scooter from behind. As a result, he was thrown off the scooter and received fatal injuries and Madan Lal was rushed to hospital where he succumbed to his injuries.

3. A claim petition was filed on 15.4.85 and an award was made on 7.4.1995. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Mr. Ashok Popli, learned Counsel for the appellants, assailed the said award on quantum of compensation. Counsel for the appellants contended that the Tribunal has erred in assessing the income of the deceased even after considering future prospects at Rs. 3,000 per month whereas after looking at the facts and circumstances of the case the Tribunal should have assessed the income of the deceased at Rs. 4,500 per month. The counsel submitted that the Tribunal has erroneously applied the multiplier of 10 while computing compensation when according to the facts and circumstances of the case multiplier of 15 should have been applied. The counsel also raised the contention that the rate of interest allowed by the Tribunal is on the lower side and the Tribunal should have allowed simple interest at the rate of 18 per cent per annum in place of only 12 per cent per annum. Counsel contended that the Tribunal has erred in not awarding adequate compensation for non-pecuniary damages. The counsel also urged that the Tribunal erred in holding the deceased 40 per cent liable for the aforesaid accident.

5. Mr. J.N. Aggarwal, counsel for the respondents refuted the contentions raised by the counsel for the appellants and submitted that the Tribunal passed the award after due deliberation and after considering the facts and circumstances of the case. He urged that the award is just and fair and requires no interference.

6. I have heard learned Counsel for the parties and have perused the record.

7. The appellant No. 1 deposed as PW 6 and stated that the deceased was of 46 years of age at the time of the accident. She stated that the deceased used to work as Assistant Director, Census at the time of his death. She further deposed that the deceased used to earn Rs. 2,600 p.m. L.P. Naik, PW 4, was working in the office of the deceased and he proved the salary of the deceased as Rs. 2,700 p.m. The said witness also deposed that had the deceased not met his untimely death he would have been earning Rs. 4,950 p.m. at the time of the deposition due to rise in the scale. Rajinder Singh, PW 5, also working at the office of the deceased supported the deposition of the PW 4.

8. The Claims Tribunal thus considered the future prospects after relying on the deposition of PW 4 but unfortunately did not follow the method adopted in various pronouncements of the Apex Court while assessing the income. The Tribunal on its own without any reasoning assessed income of the deceased at Rs. 3,000. I feel the Tribunal erred in computing the income at Rs. 3,000 p.m. I do not find fault in the approach of the Tribunal so far it took into consideration future prospects after relying upon the deposition of the witnesses but the Tribunal erred in calculating the same. Thus, the award needs to be modified in this regard.

9. The next contention raised by the counsel for the appellants is that the Tribunal has erred in applying the multiplier of 10 in the facts and circumstances of the case. This case pertains to the year 1984 and at that time Second Schedule to the Motor Vehicles Act had not been brought on the statute book. The said Schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas : 1994 ACJ 1 (SC). In the said judgment it was observed by the court that maximum multiplier of 16 could be applied by the courts, which after coming into force of the Second Schedule has risen to 18. The age of the deceased was 46 years at the time of accident and he is survived by his widow, three minor children and aged parents. It is no more res Integra that while choosing a multiplier, the age of the deceased or of the claimants, whichever is higher should be kept in mind. Taking a balanced view of the said Apex Court judgment and the Second Schedule to the Motor Vehicles Act, in the facts of the present case I am of the view that after looking at the age of the

claimants and the deceased the appropriate multiplier would be 12. Thus, the award is modified on this count.

10. As regards the issue of interest that the rate of interest of 12 per cent per annum awarded by the Tribunal is on the lower side and the same should be enhanced to 15 per cent per annum. I feel that the rate of interest awarded by the Tribunal is just and fair and requires no interference. No rate of interest is fixed under Section 171 of [Motor Vehicles Act, 1988](#). The interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again, the Apex Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking into consideration relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest at the rate of 12 per cent per annum by the Tribunal and the same is not interfered with.

11. On the contention regarding that the Tribunal has erred in not granting adequate compensation towards loss of consortium and no compensation has been granted towards loss of love and affection, funeral expenses, loss to the estate and the loss of services which were being rendered by the deceased to the appellants, I feel that the same needs due consideration. In this regard compensation towards loss of love and affection is awarded at Rs. 50,000; compensation towards funeral expenses is awarded at Rs. 10,000 and compensation for loss to estate is awarded at Rs. 10,000. Compensation towards loss of consortium is enhanced from Rs. 15,000 to Rs. 50,000.

12. As far as the contention pertaining to the awarding of amount towards mental pain and suffering caused to the appellants due to the sudden demise of the deceased and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

13. As regards the issue of contributory negligence to the extent of 40 per cent has been attributed to the deceased by the Tribunal, I feel that the Tribunal erred in holding deceased 40 per cent liable for the accident. Dharam Singh, PW 3, who was a pillion rider on the scooter which was being driven by the deceased, deposed that the scooter was moving from Rajpur Road towards Boulevard Road and the offending bus came from the back side of the said scooter and hit the scooter. In his cross-examination the said witness deposed that when the deceased took a turn to Boulevard Road, the offending bus was at a distance of 50 yards and he also stated that just when the scooterist took 8 or 10 paces after turn, the bus hit the deceased from behind. In their defence the respondents examined the driver of offending vehicle. The deposition of the driver of the offending vehicle cannot be relied upon as he is an interested witness. It is no more res Integra that the deposition of an interested witness is nothing more than a dead wood. The Tribunal ought to have given weight-age to the deposition of PW 3. In the light of the above discussion, I feel that the Tribunal had erred in holding the deceased negligent to the extent of 40 per cent for the accident.

14. On the basis of the discussion, the income of the deceased would come to Rs. 4,050, that is, after doubling Rs. 2,700 to Rs. 5,400 and after taking the mean of them. After making a deduction of 1/3rd the monthly loss of dependency comes to Rs. 2,700 and annual loss of dependency comes to Rs. 32,400 and after applying multiplier of 12 it comes to Rs. 3,88,800. Thus, total loss of dependency comes to Rs. 3,88,800. On considering Rs. 1,20,000, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 5,08,800.

15. In view of the above discussion, the total compensation is enhanced to Rs. 5,08,800 from Rs. 1,59,000. The differential amount shall be paid with up to date interest at the rate of 7 per cent per annum from the date of filing of the petition till realization and the same shall be paid to the appellants by the respondent D.T.C.

16. With the above directions, present appeal is remitted back to the Tribunal for apportionment of compensation in favour of the appellants.