SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

D.T.C. Vs. Lata Mansukhani and ors

D.T.C. Vs. Lata Mansukhani and ors

SooperKanoon Citation : sooperkanoon.com/920693

Court : Delhi

Decided On : Aug-10-2011

Judge : Reva Khetrapal, J.

Acts : Motor Vehicles Act, 1988 - Section 166

Appeal No. : FAO 619/2003

Appellant : D.T.C.

Respondent : Lata Mansukhani and ors

Advocate for Def. : Mr. Navneet Goyal, Adv.

Advocate for Pet/Ap. : Mr. J.N. Aggarwal, Adv.

Judgement :

1. By way of this appeal, the appellant-Delhi Transport Corporation seeks to assail the judgment and award dated 30th May, 2003 passed by the learned Motor Accidents Claims Tribunal, Delhi.

2. The facts may be briefly recapitulated as follows. On 18.07.1999, one Mohan Mansukhani, aged about 55 years, was going from his house in Model Town towards the bus stand, after crossing the G.T. Karnal Road, when he was hit by bus No.DBP-6048 on the road leading to the bus stand. Allegedly the said bus was being driven by the respondent No.5, Angrez Singh at a very fast speed,

recklessly and negligently and it hit the deceased from behind causing fatal injuries. The respondents No.1 to 4, who are the legal representatives of the deceased, being his widow and three daughters, filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the untimely demise of their bread earner. The learned Motor Accidents Claims Tribunal after analyzing the evidence adduced before it held that the accident which had resulted in the unfortunate death of the deceased was the outcome of the rash and negligent driving of the offending bus by the respondent No.5. As regards the quantum of compensation, the learned Tribunal, on the basis of the testimony of PW3 Smt. Lata Mansukhani, calculated the total loss of dependency of the respondents No.1 to 4 to be in the sum of ` 6,45,348/-, and after adding the non-pecuniary damages to the said amount awarded a sum of ` 6,70,348/- with interest at the rate of 9% per annum from the date of the petition till realisation. The appellant as the owner of the offending bus was directed to pay the award amount.

3. Aggrieved by the aforesaid findings of the Tribunal, the present appeal has been preferred by the appellant. Mr. J.N. Aggarwal, the learned counsel for the appellant, has challenged the award primarily on two grounds. The first is that the learned Tribunal ought to have held that the deceased met with his death due to his own acts of omission and commission, in that the deceased due to his exuberance attempted to board the bus before it had been parked at the stand for boarding by the commuters. Mr. Aggarwal contended that the negligence of the deceased thus contributed to his own death and to that extent the award amount deserved to be scaled down.

4. The second contention of Mr. Aggarwal, the learned counsel for the appellant, pertains to the quantum of compensation awarded by the learned Tribunal. It was contended that there was no basis for the Tribunal to arrive at the finding that the monthly loss of dependency of the respondents No.1 to 4 was ` 5,000/- per month. It was further contended that there was no evidence on record to bear out the fact that the income of the deceased would have increased over the passage of years and, as such, the learned Tribunal erred in applying the dictum laid down by the Supreme Court in the case of Sarla Dixit vs. Balwant Yadav, AIR 1996 SC 1274.

The counsel contended that though no specific reference had been made by the learned Tribunal to the said decision of the Supreme Court, the Tribunal had taken the average monthly income of the deceased at ` 7,333/- by doubling his actual earnings of ` 5,000/- to ` 10,000/- and thereafter dividing the sum total of his actual earnings and anticipated earnings by the figure of two. The counsel for the appellant also contended that the Tribunal ought to have applied the multiplier of 8 and, at best, the multiplier of 9 to the multiplicand constituting the loss of dependency of the legal representatives of the deceased. Instead, a multiplier of 11 had been applied, which could not be termed as the appropriate multiplier keeping in view the fact that the deceased was admittedly 55 years and 10 months of age at the time of the accident.

5. Mr. Navneet Goyal, the learned counsel for the respondents No.1 to 4, on the other hand, sought to support the findings of the learned Tribunal with regard to the causation of the accident and with regard to the rash and negligent manner in which the offending bus was being driven by the respondent No.5 resulting in the unfortunate accident. As regards the quantum of compensation awarded by the learned Tribunal, Mr. Goyal submitted that the compensation deserved to be enhanced, inter alia, on the following grounds:

(i) The learned Tribunal ought to have taken the average income of the deceased as ` 7,500/- instead of ` 7,333/-.

(ii) Keeping in view the fact that only one daughter of the deceased was married and there were two unmarried daughters of the deceased apart from the wife of the deceased, the learned Tribunal ought to have deducted only one-fourth of the average income of the deceased towards his personal expenses and maintenance.

(iii) The learned Tribunal ought to have capitalized the loss of dependency suffered by the claimants by the multiplier of 15 keeping in view the fact that one of the daughters of the deceased is mentally challenged and her dependency is a lifelong one.

(iv) The learned Tribunal erred in awarding meagre amount towards the pecuniary and non-pecuniary damages and no amount whatsoever has been awarded towards the loss of estate.

6. Adverting to the contention of the learned counsel for the appellant with regard to the contributory negligence of the deceased, in my view, the same is totally devoid of merit. The Tribunal has threadbare analysed the evidence of PW2 Shri Satbir Gupta, an eye- witness to the accident as well as the deposition of RW1 Angrez Singh, the driver of the offending bus to arrive at the conclusion that the rash and negligent driving of the latter had resulted in the fatal accident. I find no reason to differ with the conclusions of the Tribunal in this regard, but a look first at the testimonies of the said two witnesses.

7. PW2 Shri Satbir Gupta, in the course of his testimony, stated that on the fateful day he was coming from Lal Bagh Ashram and going towards the bus terminal with two other persons. The deceased, Shri Mohan Mansukhani was ahead of him and was going into the bus terminal when bus No.DBP-6048 came from behind and hit against him with the front bumper of the bus and dragged him, resulting in his collar bones being broken completely and his receiving other injuries as well. He further testified that the bus driver was driving at a fast speed. He also stated that he had narrated the incident to the police and given them all the particulars when he came to know that the said Mohan Mansukhani had died. Though the witness was extensively cross-examined, he did not budge from the stand taken by him in his examination-in-chief. Thus, the aforesaid testimony of PW2 Satbir Gupta emerged unshaken after cross- examination. He clarified that the accident had taken place inside the bus terminal near the 'Juicewala shop'. In answer to a specific query put to him, he stated that the speed of the bus might be 40/45 km per hour and that the front bumper left portion had hit the deceased. He categorically denied the suggestion put to him that the deceased had tried to board the moving bus and had fallen down while doing so. A lot of emphasis has been laid by the learned counsel for the appellant on the fact that the witness in his cross-examination admitted that he knew the deceased, but this, in my view, is not a sufficient ground to discard the testimony of the witness whose statement appears to be otherwise worthy of credence and has passed the test of extensive

cross-examination.

8. As against this, the statement of RW1 Angrez Singh appears to me to be a self-serving one. He, in his testimony, stated that the bus was moving at a slow speed towards Azadpur Terminal for booking a scheduled trip of Route No.114. At that time, a passenger seeing the slow speed of the bus tried to board the moving bus, as a result of which he received accidental injuries. He deposed that he had written to the Depot Manager that the said accident was caused due to the rashness and negligence of the deceased, but in the course of his cross-examination was compelled to admit that he had no proof of the same. He was also forced to admit that he had not complained to any police official regarding his false implication in the criminal case. He also admitted in his cross-examination that it was only after entering the bus terminal at Azadpur that his bus was to be awarded a trip to Kutub Garh. In my view, it is difficult to fathom why a person would try to board a bus which was entering the terminal and had yet to be awarded a trip. Had the bus been leaving the terminal, it could have been argued that the person in his attempt not to miss the bus had tried to board the running bus.

9. Apart from the above, in my opinion, the entire defence of the appellant is falsified by the site plan (Ex. P7) prepared by the Investigating Officer, wherein place 'A' has been shown as the place of accident which is just towards the right side of the middle of the road, and place 'B' has been shown to be just near the corner of the road towards the left side where the deceased was found lying after the accident. It has been rightly observed by the learned Tribunal that a person falling down from a bus while trying to board a moving bus cannot fall down towards the right side of the bus when the entrance gate of the bus is always towards the left side and thus the story of RW1 stands completely falsified.

10. Significantly, PW2 Satbir Gupta also specifically deposed that the bus came from behind and hit the deceased with the front bumper and dragged him for some distance. The version of PW2 is supported by the site plan Ex.P7, wherein place 'A' has been shown as the place of the accident which is in the middle of the road, which suggests that the deceased was hit by the front bumper. The deposition of

PW2 that the bus dragged the deceased and his collar bones were broken is also corroborated by the post-mortem report. Further, I find no reason to disbelieve the testimony of PW2 Satbir Gupta. No motive whatsoever was imputed to him for deposing falsely. He was one of the persons accompanying the deceased at the time of the accident and is a natural witness to the accident. Thus, the learned Tribunal rightly relied upon his testimony to hold that the driver of the appellant was guilty of rash and negligent driving. It also cannot be lost sight of that the driver of the bus was entering a bus terminal, presumably crowded, and as the driver of a heavy vehicle it was his duty to have ensured that he drove the bus carefully. PW2 has stated that the bus was being driven at a fast speed, and the fact that the deceased was dragged by the bus bears out the testimony of PW2. The findings of the learned Tribunal with regard to the negligence of the respondent No.5 are accordingly affirmed.

11. As regards the quantum of compensation, PW3 Smt. Lata Mansukhani categorically deposed in the witness box that the deceased was running a stationery shop at Model Town and he used to give her ` 5,000/- per month for household expenses. Some photographs of the shop have been placed on record, which, though have not been duly proved, show that the deceased was running a shop in the nature of a General Store-cum-Stationery shop. PW3 further deposed that her deceased husband had purchased a house during his lifetime and placed on record the Agreement to Sell of the said house. No rebuttal evidence was adduced and accordingly the Tribunal assessed the monthly income of the deceased at ` 5,000/- per month. I see no plausible reason for coming to a contrary conclusion. However, I am not inclined to agree with the findings of the learned Tribunal with regard to the future earnings of the deceased. As noted hereinabove, the Tribunal had doubled the earnings of the deceased and after adding the actual earnings of the deceased on the date of the accident to his anticipated earnings divided the said figure by two, to arrive at the average monthly income of the deceased as ` 7,333/-. I do not find any evidence on record to justify the conclusion that the earnings of the deceased would have increased in the years to come. The deceased was 55 years of age and presumably over the years his business must have gathered momentum, and whether his income would have risen much further in the coming years or decreased is entirely a

matter of conjecture.

12. I am fortified in coming to the above conclusion from the decision rendered by the Supreme Court in the case of Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121, wherein the Supreme Court has held that in view of the imponderables and uncertainties, as a rule of thumb an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects should be made where the deceased has a permanent job and is below 40 years and an addition of only 30% should be made if the age of the deceased is between 40 to 50 years and there should be no addition, where the age of the deceased is more than 50 years. It was further held that where the deceased was self-employed, as in the instant case, the Courts will usually take only the actual income at the time of the death; a departure from the aforesaid dictum should be made only in rare and exceptional cases involving special circumstances.

13. I am constrained to hold that in the present case there appear to be no special circumstances in this case to justify a departure from the aforesaid guidelines laid down by the Supreme Court. Accordingly, the average monthly income of the deceased for the purpose of computing the loss of dependency of his legal representatives is assessed to be in the sum of ` 5,000/- only. However, keeping in view the fact that the deceased left behind him his wife and three daughters, that is, four dependents, a deduction of one-fourth only is required to be made from his income towards his personal expenses. Thus, the average monthly loss of dependency of his legal representatives comes to ` 3,750/- per month and the annual loss of dependency comes to ` 45,000/- per annum. To the aforesaid multiplicand, the Tribunal has applied the multiplier of 11, and I think rightly so. As held in the case of Sarla Verma (supra), the appropriate multiplier where the age of the deceased is between 51 to 55 years is the multiplier of 11, which incidentally is also the multiplier set out in the Second Schedule to the Motor Vehicles Act, 1988. Thus calculated, the respondents No.1 to 4 are held entitled to receive pecuniary damages in the sum of ` 4,95,000/-.

14. In addition to the aforesaid pecuniary amount, the respondents No. 1 to 4 are also held entitled to receive a sum of ` 10,000/- towards loss of consortium, a sum

of ` 10,000/- towards the loss of estate, ` 25,000/- towards the loss of love and affection and ` 10,000/- towards funeral expenses and last rites of the deceased. The total amount of compensation awardable to the respondents No. 1 to 4 thus comes to ` 5,50,000/-. The quantum of compensation is accordingly reduced from ` 6,70,348/- to ` 5,50,000/- with interest as awarded by the learned Tribunal.

15. The award is modified to the aforesaid extent. Resultantly, the appeal is allowed in part.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com