

Sharda Devi and ors Vs. Jaspal Singh and ors

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Court : Delhi

Decided On : Sep-27-2011

Judge : Reva Khetrapal, J.

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

Appeal No. : FAO 61/1995

Appellant : Sharda Devi and ors

Respondent : Jaspal Singh and ors

Advocate for Def. : Mr. D.D.Dayani; Mr. A.K.Soni, Advs.

Advocate for Pet/Ap. : Mr. Manu Shahalia, Adv.

Judgement :

1. This appeal is directed against the judgment and award dated 14.11.1994 passed by the Motor Accident Claims Tribunal, Delhi, whereby a sum of ` 2,00,000/- was awarded in favour of the appellants with interest at the rate 12% per annum from the date of the institution of the petition till the date of the award.

2. The facts relevant for the decision of the present appeal are that one Raje Singh, while he was going on his cycle to Shahdra on 04.10.1984 at 11:00 p.m., was hit by a taxi bearing No. DLT 4031 at Korla Bridge. He was taken to the JPN Hospital, where he succumbed to the injuries sustained by him on 08.10.1984. A

claim petition was filed by his legal representatives being his wife and two minor children under Section 110A of the [Motor Vehicles Act, 1939](#), claiming compensation in the sum of ` 5,00,000/- for the untimely demise of their bread-earner against the driver, the owner and the insurer, (the respondents No. 1 to 3 herein) of the offending taxi.

3. A joint written statement was filed by the respondents No.1 and 2, wherein the factum of accident was admitted. In the written statement filed by the respondent No.3-Insurance Company, it admitted that the offending vehicle was insured with it, but pleaded that its liability was limited to the extent of ` 50,000/- only. The learned Tribunal after holding an enquiry held that the accident was the outcome of the rash and negligent driving of the respondent No.1 and proceeded to compute the compensation payable to the appellants. In view of the fact that there was on record the salary certificate of the deceased proved by PW2-Sh. G.P.Gupta, an official from Khadi Gramodyog Bhawan, the employer of the deceased, the learned Tribunal accepted the salary of the deceased to be in the sum of ` 1,234/- per month as shown in the said certificate, and taking into account the fact that with the passage of time there would be an increase in the aforesaid salary, assessed the income of the deceased at the time of his retirement to be in the sum of ` 2,000/- per month by applying the ratio of the judgment in the case of 'Kerala State Road Transport Corporation versus Susamma Thomas', 1994 ACJ

1. Deducting one-third from the aforesaid average income of the deceased towards his personal expenses, the Claims Tribunal assessed the loss of dependency of the appellants to be about ` 1,400/- per month to which it applied the multiplier of 12, thereby, computing the total loss of dependency of the appellants to be in the sum of ` 2,01,600/- only (that is, ` 1,400/- X 12 X 12 = ` 2,01,600/-) rounded off to ` 2,00,000/- (Rupees two lakh only). As regards the defence of the Insurance Company that its liability was limited to the sum of ` 50,000/- only, the learned Tribunal held that no additional premium having been paid by the respondent No.2, the liability of the Insurance Company was limited to ` 50,000/- only.

4. Aggrieved from the aforesaid findings of the Tribunal, the appellants, who were the claimants before the learned Tribunal, have preferred the present appeal to challenge the findings of the Tribunal on the aspect of quantum of compensation payable to them as well as on the aspect of the limited liability of the Insurance Company.

5. As regards the quantum, Mr. Manu Shahalia, the learned counsel for the appellants, relying upon the judgment of the Honble Supreme Court in the case of 'Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.' (2009) 6 SCC 121, contends that the learned Tribunal erred in applying the multiplier of 12 instead of the multiplier of 15, which is the multiplier approved of by the Supreme Court for the age group of deceased persons between 36 to 40 years of age. He pointed out since it is not in dispute that the deceased was 39 years of age on the date of the accident, the learned Tribunal ought to have applied the multiplier of 15 to augment the multiplicand constituting the loss of dependency of the appellants. He also contends that no amount whatsoever has been awarded by the learned Tribunal towards the pecuniary and non-pecuniary damages suffered by the appellants apart from the loss of dependency.

6. On the second aspect viz., the aspect of limited liability, Mr. Shahalia, contends that the defence raised by the Insurance Company of limited liability is altogether unsustainable, in view of the fact that admitted position is that the original policy was never sent to the insured, and as such the original policy, which was produced in evidence by RW2 - Shri O.P. Aggarwal, an official of the Insurance Company, cannot be relied upon, more so, in view of the fact that the „Tariff was not produced by the said witness as also the proposal form and the receipt of the premium.

7. Mr. D.D. Dayani, the learned counsel for the respondent No.1/insured, supports the aforesaid contentions of the counsel for the appellants by contending that in the absence of the proposal form, the receipt for the premium and as well as the „Tariff, the original policy of insurance produced by the Insurance Company is a self-serving document, which appears to have been produced by the Insurance Company with a view to avoid its liability and to fasten the liability upon the

insured, who had duly insured his vehicle against unlimited third party liability.

8. Mr. A.K.Soni, the learned counsel for the Insurance Company, however, sought to support the award and to contend that this was a case of limited liability. On the aspect of quantum of compensation, Mr. Soni, contended that not more than 50% increase to the actual income of the deceased could have been made by the learned Tribunal in terms of the judgment of the Supreme Court in the case of Sarla Verma (supra), and that the learned Tribunal has wrongly assessed the income of the deceased at ` 2,000/- per month on the basis of the judgment rendered in Susamma Thomas (supra). He further contended that if the judgment of Susamma Thomas (supra) is to be followed, then the multiplier in accordance with the judgment in the case of Sarla Verma (supra), cannot be applied.

9. It may be noted at this juncture that with a view to ensure uniformity in the assessment of compensation payable to the victims of motor vehicular accidents, the Supreme Court in the case of Sarla Verma (supra) laid down certain guidelines to be uniformly followed by all courts and tribunals so as to avoid inconsistency in the awards passed by courts and tribunals all over the country. It is accordingly proposed to follow the guidelines laid down in the said judgment and to re-compute the compensation payable to the appellants in the light of the ratio of the said decision. On facts, it is not in dispute that the salary of the deceased on the date of the accident as per his salary certificate, which is duly proved on record (Exhibit PW- 2/1) was in the sum of ` 1,234/- per month. Taking into account the prospects of increase in the income of the deceased and adding 50% on account of the anticipated increase in his salary in consonance with the judgment in Sarla Verma's case (supra), the average monthly income of the deceased is assessed to be in the sum of ` 1,851/- per month [that is, ` 1,234/- (monthly salary at the time of accident) + ` 617/- (anticipated increase in salary)]. Deducting one-third therefrom towards the personal expenses of the deceased, the loss of dependency of the appellants comes to ` 1,234/- per month or say ` 14,808/- per annum. To the aforesaid multiplicand, the multiplier of 15, which is the tabulated multiplier, approved of by the Supreme Court in the case of Sarla Verma (supra), must be applied. Calculated in this manner, the total loss of dependency of the appellants comes to ` 14,808/- X 15 = ` 2,22,120/- (Rupees two lakh twenty two thousand one

hundred and twenty only). In addition to the aforesaid amount of loss of dependency, the appellants are held entitled to receive a sum of ` 8,000/- towards the medical expenses incurred by them for the 4 days for which the deceased was hospitalized and towards the last rites of the deceased. Non- pecuniary damages under the heads of loss of estate, loss of love and affection and loss of consortium of the appellant No.1 in the sum of ` 10,000/- each are also awarded. Thus, the total award amount works out to ` 2,60,120/- rounded off to ` 2,60,000/- (Rupees two lakh and sixty thousand only). Interest at the rate of 12% per annum as awarded by the learned Tribunal shall be paid on the initial award amount of ` 2,00,000/- from the date of the institution of the petition till the date of the realisation. On the enhanced amount of compensation, that is, on ` 60,000/-, however, the interest shall be paid at the rate of 7.5% per annum from the date of the institution of the petition till the date of realisation.

10. Adverting next to the defence of the Insurance Company that its liability is limited to the extent of ` 50,000/- only, there is nothing on record to support this defence. Interestingly, as noticed above, the original insurance policy has been produced on record by the Insurance Company. There is also on record the admission of RW2, the official of the Insurance Company, that the original policy was in fact never sent to the insured. Had the Insurance Company produced the original proposal form and the receipt for the premium, possibly something could be deduced therefrom, but the Insurance Company has failed to produce either the proposal form or the original receipt showing the payment of premium to it by the insured. There is, thus, no corroborative evidence to corroborate the contents of the original policy and the production of the original policy by RW2, the witness of the Insurance Company, is therefore of no avail to the Insurance Company.

11. As regards the „Tariff, though a specific query was put to RW2 in cross-examination, the „Tariff was not produced by the respondent No.3 - Insurance Company to show that the policy was a limited one as regards third party liability. Interestingly, the witness of the Insurance Company in his cross-examination admitted that in the instant case, the respondent No.1 (that is, the owner) was insured for third party risk liability and further admitted as correct the suggestion that premium for „Act only policy is less than premium for third party liability. Then

again, a perusal of the original policy (Exhibit R-1) shows that on extreme right hand corner of the policy the words "Thirty Party" are clearly set out, just above the policy number. It is also relevant to note that document Exhibit R-1 mentions that the limit of the Companys liability under Section II- 1(ii) "in respect of any one claim or series of claims arising out of one event is to the extent of ` 1,50,000/-." This Section, as is clear from the „Tariff, relates to property damage and there is provision in it for unlimited personal injury. For the sake of ready reference, the relevant portion of the „Tariff is reproduced hereunder: "ADDITIONAL PREMIUM IN RESPECT OF THIRD

PARTY & INDEMNITY LIMITS.

Liability to the Public Risks:

The indemnity granted to the Insured may be increased in respect of the undernoted vehicles by payment of an additional premium on the following scale. In case where the limits or indemnity provided under the standard policy exceed Rs.50,000/- such limits may be increased in accordance with the scale at an additional premium equivalent to the difference between the scale rates for such standard policy limits and those for required increased limits.

Limits of liability Scales of rates Scale of rates applicable to all applicable to goods commercial carrying vehicles vehicles except (i) General Cartage goods carrying Class A(2) vehicles -General Cartage Class A(2) & (ii) Motor Trade Road Risk only Class E.

Per Per Per vehicle Per vehicle Trailer Trailer

1. Unlimited 50 25 100 50 personal injury Rs.150000/- property damage
2. Unlimited 75 35 150 60 personal injury Rs.300000/- property damage.

Per unlimited Above rate plus Above rate plus personal injury and Rs.2.50 Rs.5/- for every Additional Rs.100000/0 or part NB. For vehicles thereof, for property designed as damage in excess of commercial vehicle Rs.3,00,000/- and used for commercial and private purposes excluding use for hire or reward.

Note:

The property damage limits in respect of Whether unlimited vehicles rated under Class „E may be personal injury is increased in accordance with the above required to be scale by charging 50 per cent of the covered under an above rates. "Act only" policy in respect of vehicles rated under Regulation 2 of the Commercial Vehicles Tariff and registered as such this may be granted by charging 50% of the rates shown in the first item of Schedule for vehicles appearing at (a) above.

12. A look at the India Motor Tariff effective from 01.02.1982 shows that the premium for an „Act Only policy is limited to ` 100/- only. A bare glance at the insurance policy produced in the present case shows that a premium of ` 120/- was paid along with ` 48/- for passenger liability (4 passengers x ` 12/- = 48), meaning thereby that the policy was not an „Act Only policy and it was for unlimited third party liability.

13. In view of the aforesaid, the award amount is enhanced from ` 2,00,000/- to ` 2,60,000/- with interest thereon as set-out herein above with a direction to the Insurance Company to deposit the entire award amount, less the amount already paid, if any, with the Registrar-General of this Court within 30 days from the date of this order, which, on deposit, shall be released to the appellants as apportioned by the learned Tribunal. The enhanced amount with interest thereon shall however enure solely for the benefit of the appellant No.1.

14. The appeal is allowed in the above terms. There shall however be no order as to costs.

15. Records of the Claims Tribunal shall be sent back forthwith.

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