

Chanderwati and ors Vs. Sat Narain and ors

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Court : Delhi

Decided On : Jan-05-2012

Appellant : Chanderwati and ors

Respondent : Sat Narain and ors

Advocate for Def. : Mr. Pankaj Seth

Advocate for Pet/Ap. : Mr. Navneet Goyal

Judgement :

UNREPORTED * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO 379/1999 CHANDERWATI and ORS. Appellants Through: Mr. Navneet Goyal, Advocate versus SAT NARAIN and ORS. Respondents Through: Mr. Pankaj Seth, Advocate for the Insurance Company % Date of Decision : January 05, 2012 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL.

1. Whether reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporter or not?.

3. Whether judgment should be reported in Digest? JUDGMENT : REVA KHETRAPAL, J..

1. This appeal is directed against the judgment and award of the Motor Accidents Claims Tribunal, Delhi dated 03.05.1999 passed in Suit No.1003/1988. FAO

2. The factual matrix is that on 18.08.1988 at about 7.30 p.m., one Mathura Prasad was travelling in bus bearing No.DBP 2569 going towards his residence and when the said bus reached the old Rohtak Road near Daya Basti Railway Colony Quarters, the driver of the bus applied the brakes suddenly causing a big jerk, as a result of which Mathura Prasad fell from the bus and sustained fatal injuries to which he succumbed on the same day. The said bus was being driven by the respondent No.1, was owned by the respondent No.2 and insured with the respondent No.3-M/s. New India Assurance Co. Ltd. A Claim Petition claiming compensation under Sections 110A and 92A of the Motor Vehicles Act, 1939 was filed by the legal representatives of Mathura Prasad (hereinafter referred to as "the deceased"), being his widow, his two minor sons and parents..

3. The respondents No.1 and 2, in the joint written statement filed by them, did not deny the factum of the accident, but alleged that the said accident was caused due to the negligence of the deceased himself, inasmuch as he was trying to board a running bus. The respondent No.3-Insurance Company took the specific plea that the FAO 379/1999 *Page 2 of 17* liability of the Insurance Company was limited to ` 15,000/- as per the terms and conditions of the policy and the provisions of the Motor Vehicles Act, 1939..

4. The Motor Accidents Claims Tribunal by its impugned award dated 03.05.1999 came to the conclusion that the deceased died in his attempt to board the running bus, and held that the accident was the outcome of the negligence of the driver of the offending bus, and also of the negligence on the part of the deceased himself, to the extent of fifty percent each..

5. On the aspect of quantum of compensation payable to the legal representatives of the deceased, the learned Tribunal assessed the monthly income of the deceased to be in the sum of ` 1,200/- per month and after deducting one-third (1/3rd) from the aforesaid amount towards the personal expenses of the deceased, assessed the loss of dependency of the appellants to be in the sum of ` 800/- per month, or say, ` 9,600/- per annum. To augment the said multiplicand, the Tribunal applied the multiplier of 15 and assessed the total loss of dependency

of the appellants to be in the sum of ` 1,44,000/- (that is, *FAO 379/1999 Page 3 of 17* ` 9,600/- x 15). The learned Tribunal, however, reduced the same by fifty percent on account of its finding as to the contributory negligence on the part of the deceased, thereby holding the appellants entitled to an award of ` 72,000/- (including ` 15,000/- awarded to the appellants as interim compensation) along with interest at the rate of 10% per annum from the date of the filing of the petition till realisation. It was further held by the learned Tribunal that the liability of the respondent No.3 was limited to the extent of ` 15,000/- in the case of a passenger, and it accordingly held the respondents No.1 and 2 jointly and severally liable to pay to the appellants the amount in excess of ` 15,000/-, that is, ` 57,000/- along with proportionate interest thereon..

6. Aggrieved by the aforesaid judgment and award of the learned Tribunal, the present appeal has been preferred by the appellants on the following grounds: (a) The learned Tribunal grossly erred in not believing the testimonies of PW1, PW3 and PW4 and in holding that there was contributory negligence on the part of the deceased to the *FAO 379/1999 Page 4 of 17* extent of 50%, though the evidence adduced by the appellants clearly proved that the deceased had fallen from the offending bus due to the rash and negligent driving of the respondent No.1. (b) The amount of compensation awarded by the Tribunal deserves to be enhanced, in as much as the learned Tribunal erred in assessing the income of the deceased to be in the sum of ` 1,200/- per month only, while as per the deposition of the widow of the deceased, he used to give her ` 2,000/- per month, and in not making any addition to the income of the deceased towards the future prospects of the deceased. (c) The learned Tribunal erred in deducting one-third of the income of the deceased towards his personal expenses, while in the facts of the case, a deduction of not more than one-fourth was justified. (d) The multiplier of 15 adopted by the learned Tribunal to augment the multiplicand constituting the loss of dependency of the appellants was on the lower side, in view of the fact that *FAO 379/1999 Page 5 of 17* the deceased was of 27 years of age and fell in the age group of victims between 26 to 30 years of age for which the Supreme Court has approved the multiplier of 17 as the appropriate multiplier. (e) The learned Tribunal did not award any amount whatsoever to the appellants under the various heads of non- pecuniary damages. (f) The learned Tribunal erred in holding that

the liability of the Insurance Company was limited to the extent of ` 15,000/- only..

7. As regards the manner in which the accident took place, Mr. Navneet Goyal, the learned counsel for the appellants has taken me through the testimonies of PW1 Ram Prakash, a passenger in the offending bus, PW3 Suraj Mal, an autorickshaw driver, and PW4 Shankar Lal, an independent witness, all of whom claimed to have witnessed the accident..

8. PW1 Ram Prakash deposed that on the fateful day, he was travelling in bus bearing No.DBP 2569, plying on route No.817, from FAO 379/1999 *Page 6 of 17* Kauriya Pul to Najafgarh. The deceased boarded the bus from Sarai Basti and was standing near the front window of the bus. The bus driver was driving the bus in a rash and negligent manner as a result of which the deceased fell from the window onto the road. In his cross-examination, this witness clarified that the deceased was standing on the footboard and that the speed of the bus was 60/70 kilometers per hour. He denied the suggestion that the deceased was not travelling in the bus and also the suggestion that the deceased had tried to board the bus while running..

9. The testimony of the aforesaid witness is corroborated by the testimony of PW3 Suraj Mal, who deposed that on the date of the accident, while he was waiting for passengers for his three-wheeler scooter, a bus bearing No.DBP 2569 came from the Azad Market side going towards Najafgarh at a speed of 75 kilometers per hour. The bus driver applied the brakes suddenly and a passenger fell down from the front door of the bus. He went to the Police Station to inform the police regarding the accident and his statement was recorded by the police. The accident was caused due to the negligence FAO 379/1999 *Page 7 of 17* of the bus driver. In his cross-examination, he categorically denied the suggestion that the deceased was trying to board a running bus and in the process his hand slipped from the handle of the bus and he fell down and sustained injuries. He also denied the suggestion that he was deposing falsely at the instance of the petitioners..

10. The testimony of PW4 Shankar Lal further corroborates the case of the petitioners. The said witness deposed that on 18.08.1988, while he was waiting on the Old Rohtak Road to cross the road, a bus bearing No.DBP 2569 came from

the Azad Market side at a very fast speed, and a person fell down from the front door of the bus. He further deposed that a three-wheeler scooter driver went to inform the police and another three-wheeler scooter took the injured to the hospital. In his cross-examination, he clarified that he was standing on the same side of the road from which the bus was coming. He further stated that the bus was running at the speed of 60-70 kilometers per hour in the middle of the road and the driver turned towards the left side of the road. The passenger fell due to the jerk FAO 379/1999 *Page 8 of 17* received by him. He also denied the suggestion that the deceased tried to board a running bus and in the process he fell down..

11. Mr. Goyal, the learned counsel for the appellants, also relied upon the testimonies of PW2 Dr. Bharat Singh, who proved the post- mortem report of the deceased as Ex.PW2/1; PW5 Head Constable Subedin, who proved the F.I.R. as Ex.PW6/1; and PW7 SI Mohan Singh, the Investigating Officer, who filed the challan and also proved the site plan as Ex.PW7/1, Recovery Memo as Ex.PW7/2 and Mechanical Inspection Report as Ex.PW7/3..

12. Mr. Pankaj Seth, the learned counsel for the respondent No.3- Insurance Company, on the other hand, relied upon the testimonies of RW1 Sat Narain and RW2 Shri Nath, the driver and the conductor of the offending bus respectively, to which I shall presently advert, to contend that there was no infirmity in the award of the learned Tribunal..

13. Having heard the learned counsel for the parties and perused the records of the learned Tribunal, I am not inclined to uphold the findings of the learned Tribunal as regards the manner in which the FAO 379/1999 *Page 9 of 17* accident took place. The testimonies of the petitioner's witnesses, namely, PW1, PW3 and PW4 having emerged unscathed after cross- examination, in my view, the learned Tribunal was not justified in holding that the deceased was trying to board a running bus, in which process he fell and sustained fatal injuries. The said witnesses examined by the petitioners/appellants are independent witnesses who were present on the spot at the time of the accident. All these witnesses in one voice deposed that the bus was being driven at a high speed of 60-70 kilometers

per hour and the driver had stopped the bus suddenly with a jerk, as a result of which the deceased who was travelling in the bus fell from the bus and sustained fatal injuries. The suggestions put to them that the deceased was trying to catch a running bus or that he was not a passenger in the bus have been denied by them..

14. The evidence of the respondents' witnesses, on the other hand, can only be called self-serving as no independent witness has been examined, and only the driver and the conductor appeared in the witness-box to depose that the deceased was trying to board a running FAO 379/1999 *Page 10 of 17* bus. It is also noteworthy that the driver of the offending bus, who appeared in the witness-box as RW1, stated in his cross-examination that the name of the conductor was Raj Kumar. However, it is some Shri Nath (RW2) who has been examined as the conductor of the bus. The findings of the learned Tribunal, as regards the manner in which the accident took place, in my opinion, therefore, cannot be upheld and no negligence can be attributed to the deceased..

15. Adverting now to the aspect of quantum of compensation, it is contended by Mr. Goyal, the learned counsel for the appellants that the Tribunal ought to have taken the income of the deceased to be in the sum of ` 2,000/- in view of the testimony of PW6 Chanderwati, the widow of the deceased, and the testimonies of PW8 Puran Chand Sharma, PW9 Santosh Kumar Sharma, PW10 Jai Prakash and PW11 Mahabir Prasad. Mr. Goyal further contended that the future prospects of increase in the income of the deceased should also have been given due consideration while computing the loss of dependency of the appellants. I am unable to agree with the said contention of the learned counsel for the appellants for the reason that though all the FAO 379/1999 *Page 11 of 17* witnesses examined by the petitioners viz., PW6 and PWs 8 to 11 stated that the deceased was self-employed as a dye-maker, their statements with regard to the earnings of the deceased from his said occupation were not consistent and each of the aforesaid witness gave his own estimation of the income of the deceased. No documentary evidence in the form of any receipts, etc. having been placed on record by the appellants to prove the income of the deceased, the assessment of the income made by the learned Tribunal in the circumstances cannot be faulted..

16. The third and fourth contentions of the learned counsel for the appellants pertain to the deduction of one-third (1/3rd) made by the learned Tribunal towards the personal expenses of the deceased and the multiplier adopted by the learned Tribunal. Mr. Goyal contended that in view of the fact that the deceased was survived by five legal representatives being his widow, his two minor sons and his parents, a deduction of not more than one-fourth towards the personal expenses of the deceased was justified and this would also be in consonance with the judgment of the Hon'ble Supreme Court in the FAO 379/1999 *Page 12 of 17* case of Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC.

12. Then again, according to him, the appropriate multiplier to be adopted in the instant case would be the multiplier of 17 and not the multiplier of 15 adopted by the learned Tribunal. I am inclined to accept both the aforesaid contentions of the learned counsel for the appellant..

17. The Supreme Court in the case of Sarla Verma (supra) laid down the guiding principles to be followed by all the Courts and Tribunals in computing the compensation payable to the victims and/or their legal representatives, so as to avoid inconsistency and to establish uniformity in the adjudication of claims by the Motor Accident Claims Tribunals all over the country. The guidelines contained therein inter-alia provide that where the deceased leaves behind him four to six number of dependent family members, one-fourth of his income may be deducted towards his personal and living expenses. As regards the multiplier, the Supreme Court in the said case approved of the multiplier of 17 for the victims falling in the age group of 26 years to 30 years. Admittedly, the deceased, in the FAO 379/1999 *Page 13 of 17* present case was 27 years of age at the time of his accidental death and as such the appropriate multiplier would be the multiplier of 17 and not the multiplier of.

15. 18. In view of the above, the compensation payable to the appellants needs to be re-computed and it is upon this exercise that I now embark. Taking the average monthly income of the deceased to be ` 1,200/- per month and deducting one-fourth towards his personal expenses, the loss of dependency of the appellants

thus works out to ` 1,200/- X 12 X 3/4 = 10,800/- per annum. The said multiplicand constituting the loss of dependency of the appellants needs to be augmented by an appropriate multiplier. The appropriate multiplier in the instant case being the multiplier of 17, the total loss of dependency of the appellants comes to ` 1,83,600/- ( ` 10,800/- X 17). In addition to the pecuniary loss of dependency, the appellants are also held entitled to non-pecuniary damages in the sum of ` 5,000/- each under the heads of loss of love and affection, loss of consortium, loss of estate of the deceased and a further sum of ` 7,000/- towards the funeral expenses of the deceased, that is, in all a sum of FAO 379/1999 *Page 14 of 17* ` 2,05,600/- which may be rounded off to ` 2,05,000/- (Rupees Two Lacs and Five Thousand only). Resultantly, the award amount stands enhanced from a sum of ` 72,000/- to ` 2,05,000/-. Interest at the uniform rate of 10% per annum shall be payable on the award amount from the date of the filing of the petition till realisation..

19. The only aspect of the matter which remains for consideration is the extent of the respective liability of the respondent Nos.1 to 3 to pay compensation to the appellants. In view of the finding rendered above that the deceased was travelling in the bus at the time of the accident, it is clear that the deceased was a passenger in the bus. A look at the insurance policy Exhibit RW3/A shows that premium in respect of passengers was paid by the insured to the insurer at the rate of ` 12/- per passenger and thus a total of ` 600/- was paid in respect thereof. Accordingly, the liability of the Insurance Company must be held limited to ` 15,000/- only with proportionate interest thereon. However, in view of the fact that the insurance policy in the instant case contains an Avoidance Clause under the heading of "Important Notice", it is held that the Insurance Company is liable to satisfy the FAO 379/1999 *Page 15 of 17* entire award amount in favour of the appellants in the first instance and thereafter recover the amount paid by it over and above the limits of its liability from the driver and the owner of the offending bus, namely, the respondents No.1 and.

2. (See *New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanamal Aswani and Others*, 1958-65 ACJ 559; *Amrit Lal Sood v. Kaushalya Devi Thapar*, 1998 ACJ 531; *Oriental Insurance Co. Ltd. vs. Cheruvakkara Nafeessu and Others*, 2001

ACJ 1; New India Assurance Co. Ltd. vs. Vimal Devi and Ors., 2010 ACJ 2878 (SC); followed by this Court in the cases of Gurcharan Kaur and Anr. vs. Raja Ram and Anr, 2011 (6) AD (Delhi) 36; Lata Goel and Ors. vs. Rishipal and Ors., FAO No.254/1993 decided on September 23, 2011; and Bimla Gupta and Ors. vs. Mahinder Singh and Ors., FAO No.51/1991 decided on September 26, 2011)..

20. In view of the aforesaid, the Insurance Company is directed to pay to the appellants the award amount as enhanced in paragraph 18 above by depositing the same within 30 days of the date of the passing of this judgment with the Registrar General of this Court after FAO 379/1999 *Page 16 of 17* deducting the amount already paid, if any. The award amount so deposited along with the proportionate interest thereon shall be equally appropriated between the appellants..

21. The appeal is allowed to the aforesaid extent and in the above terms. There shall be no order as to costs..

22. Record of the Claims Tribunal be sent back forthwith. REVA KHETRAPAL (JUDGE) January 05, 2012 FAO 379/1999 Page 17 of 17

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