

*** HIGH COURT OF DELHI : NEW DELHI**

FAO No.522 of 2003

% Judgment reserved on: 29th August, 2008

Judgment delivered on: 11th September, 2008

1.Smt.Chhanno Devi,
Wd./o Sh.Daya Chand

2.Baru

3.Ram Mehar

4.Jaipan

5.Balraj

(Minor sons of late Daya Chand
Through their mother Smt.Channo Devi)

6.Hassan Pat

7.Chander Pati

(minor daughters of late Daya
Chand through their mother, next
friend and natural guardian
Smt.Channo Devi)

8.Satbir(now deceased)
Through his LR's

- i)Smt.Shakuntla
Wd/o late Satbir
- ii)Km.Saroj (minor)
- iii) Km.Meena (minor)
- iv)Master Joginder (minor)

v)Master Vinod (minor)
vi)K.Reena (minor)

ii) to vi) all minor sons and daughters of
late Satbir through their mother,
next friend and natural guardian
Smt.Shakuntla

9.Satyawan

10.Satan Kumar

(sons of late Sh.Daya Chand)

All residents of Village Baklana,
Tehsil-Hansi, District-Hisar(Haryana) Appellant

Through: Mr.Rajeshwar Kumar Gupta, Adv.

Versus

1.Ram Kewal, S/o Sh.Ram Lot
R/o K-202, Raghubir Nagar,
Delhi.

2.Reham Illahi, S/o Hussan Bax
R/o A-55, J.J.Camp No.2,
Nangloi, Delhi-110041.

3.The New India Assurance Company Ltd.
New Delhi Chanana Complex,
Gurdwara Raod,
Karol Bagh, New Delhi. ...Respondents.

Through: Mr.R.K.Tripathi, Adv. for R-3.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may

- | | |
|---|-----|
| be allowed to see the judgment? | YES |
| 2. To be referred to Reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

V.B.Gupta, J.

The present appeal has been filed by the legal heirs of deceased Daya Chand against the award dated 8th April, 2003 passed by Sh.Sunil Gaur, Judge, MACT, Delhi (for short as 'Tribunal') vide which he awarded a compensation of Rs.97,000/- along with the interest @ 6% p.a. on the date of filing of the petition till realization.

2. Aggrieved with the impugned award, the appellants herein, are seeking enhancement of compensation to the tune of Rs.4 lacs.

3. Brief facts of this case are that on 20th June, 1990, deceased, aged 43 years along with his son Satbir was going with their sheeps and goats towards Slaughter House in Delhi. When they reached in front of Idgah

Raod at about 4.20 a.m, truck No.DLL-1960 driven rashly and negligently by Ram Kewal, respondent No.1 came from behind and struck against Daya Chand, who sustained fatal injuries in this accident and four sheep and two goats also died in the accident.

4. Respondents 1 & 2 being driver and owner of the truck in question, in the joint written statement filed by them, have stated that accident took place due to contributory negligence of the deceased.

5. Respondent No.3, the Insurance Company in its written statement has admitted that the truck in question was insured with it on the date of accident.

6. It is contended by learned counsel for the appellant that the Doctor who has carried out the post mortem of deceased has opined that the age of deceased was 55 years whereas, the Tribunal has held that deceased was more than 55 years on the date of accident without any evidence and contrary to the record and, thus, wrongly applied the multiplier for the

age 55 years and above. The multiplier ought to have been adopted for the age of 50-55 years.

7. Other contention raised by learned counsel for the appellant is that there were ten dependants of the deceased and as such he could not have spent more than $1/12^{\text{th}}$ of his total income but the Tribunal has deducted $1/3^{\text{rd}}$ out of income of the deceased towards personal expenses and deduction for personal expenses should not have more than $1/12^{\text{th}}$ in this case. Lastly, the deceased was earning more than Rs.3,000/- p.m. and under these circumstances, the compensation is liable to be enhanced.

8. On the other hand, it has been argued by learned counsel for respondent No.3-Insurance Company that there is no documentary proof on record with regard to the age and income of the deceased and the Tribunal has taken rightly the age of the deceased as 55 years and has applied correct multiplier. The Tribunal

rightly took notional income of deceased as Rs.15,000/- per annum, as per Second Schedule of the Act.

9. Learned counsel for the respondent has placed reliance on the judgment of this Court reported as ***Ratan Lal Mehta v. Rajender Kapoor & Anr. 1996 ACJ 372.***

10. As regards the contention to the age of the deceased, the claimants have claimed that deceased was not more than 43 years.

11. However, the claimants have not produced any documentary proof on record to prove the age of the deceased.

12. The certified copy of the post mortem report shows that the age of the deceased was 55 years.

13. The Tribunal has rightly relied upon the post mortem report for assessing the age of the deceased as 55 years at the time of accident, in the absence of any other cogent evidence.

14. Now, the question to be seen is as what multiplier should be adopted in this case, since the age of the deceased at the relevant time was 55 years.

15. In ***Ratan Lal Mehta (supra)***, cited by learned counsel for respondent-Insurance Company, this Court has observed as under;

“Multiplier Table appended by Motor Vehicles Amendment Act, 1994: if can be treated as relevant for accidents before 15.11.1994. (This will help avoid selection of multiplier based on conflicting judicial decisions).

Question arises whether the multiplier in the Table appended by the Motor Vehicles Amendment Act, 1994 which is prospective, can also be of relevance in respect of accidents which occurred before 15.11.94, on which date the Table came into force. In our opinion, the statutory multiplier table is clearly relevant for the following reasons.

Actuarial multipliers are based on mortality rates of different persons bearing different ages and are published by the Registrar General, Government of India. Census in our country are taken once in 10 years. In our view, there can be no difficulty in

taking judicial notice of the fact that over the last 10 years medical facilities have increased considerably and that is why there is also a general increase in the survival rates or decrease in mortality rates. This position has been accepted by the Supreme Court. The multiplier published, in the Amending Act, 1994 is based on the mortality or rather survival rates officially published for the period just before 1994. If a Court or Tribunal is considering the case of an accident which occurred prior to 15.11.94 when death rates were higher and survival rates lesser, then it is obvious that these multipliers in the statutory table are more favourable to the claimants if a latter multiplier based upon a higher survival rate of a latter date, immediately preceding 1994, is applied in respect of an accident which occurred long before 15.11.94. This can be explained from another angle. If in fact a multiplier table had been published by Parliament (say) for 1984 then those multipliers would have been lesser than the multipliers now published in 1994. This is because survival rates in 1984 and earlier thereto were less than those in 1994. That is why we are of the view that even in regard to cases of accidents prior to 15.11.94 the date from which the Table in the Second Schedule brought in by the Amending Act, 1994 has come into force, it will be open to the Courts/Tribunals to

take the multiplier as per the said statutory table as relevant. (In fact, the objection or dispute must come from the tortfeasors or the insurance companies. Even if they do raise an objection, we may say from experience, that the defendants need not be apprehensive of a higher award on the basis of the 1994 statutory table, because differences in each multiplier over a period of 10 years will be higher only by small fractions ranging between 0.25 or 0.50 generally.)

If the above procedure enunciated by us based on the statutory multiplier provided by Parliament is applied, we can steer clear of conflicts in the multipliers applied by Courts on the judicial side in several cases. This approach of ours will help in rationalising awards, remove ad-hocism in selection of multipliers based on individual preferences. A whole range of discrimination between case and case can easily be avoided. That is why we have taken pains to give reasons as to why the statutory multiplier Table provided for prospective use can also be used for the accidents which occurred before 15.11.1994.

In fact, if ad hoc multipliers like 26 etc. are used for pre-15.11.94 accidents and only maximum multiplier of 18 as per the Table are bound to be used for post 15.11.94 accidents, there will be undue

overpayment in regard to accidents prior to 15.11.94 i.e. in the seventies or eighties, when survival rates were far less than in 1994. Our view will eliminate any such anomaly.”

16. Thus, though the accident in the present case took place in the year 1990, yet the provisions of Second Schedule of the Act, applies to the present case.

17. As per structured formula of the Second Schedule of the Act, the appropriate multiplier for the age of above 55 years but not exceeding 60 years is 8.

18. Thus, the multiplier of 8 adopted by the Tribunal is as per the Schedule and is fully justified.

19. Further, I do not find any force in the contention of the Counsel for the appellants that the Tribunal has wrongly deducted 1/3rd of the income of the deceased towards the personal expenses.

20. In a plethora of cases, the Apex Court and various High Courts have held that 1/3rd amount of the income

should be deducted towards self-expenses of the deceased.

21. In ***New India assurance Co. Ltd. V. Charlie and another, AIR 2005 Supreme Court 2157***, the Apex Court has observed as under;

“What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case.”

22. I am, therefore, not inclined to take any contrary opinion. Thus, there is no scope for further deduction.

23. The appellants have claimed that deceased was earning Rs.3,000/- per month by doing the business of sheeps and goats.

24. Perusal of the award shows that the Tribunal has taken into consideration the notional income of deceased at Rs.15,000/- p.a. as laid down in the Second Schedule of the Act for assessing compensation in

cases of those persons who had no income prior to the accident.

25. There is no documentary proof on record to prove the income of the deceased. Thus, in the absence of any proof, the Tribunal has rightly applied the principles of notional income.

26. It is a settled legal position that under Section 168 of the Act, the compensation to be awarded in favour of the claimants, should neither be excessive nor on the lower side, but the same should be just, fair and equitable. No amount of compensation can compensate the loss of a life or can bring back happiness in the lives of the dependant family members.

27. In ***National Insurance Co. Ltd. v. Swaran Singh and Ors., AIR 2004 SC 1531***, the Apex Court discussed the purpose of enacting the Act and referred to its earlier decision in ***Sohan Lal Passi v. P. Sesh***

Reddy and Ors., AIR 1996 SC 2627 wherein it observed that;

"10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident."

28. Under the provisions of the Act, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. But the only embargo is that it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

29. In this regard, the Apex Court also observed in ***The Divisional Controller, KSRTC v. Mahadeva Shetty & Anr., JT 2003 (6) SC 519***, as under;

"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her

life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and

reasonableness, and non-arbitrary. If it is not so, it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation & another, II (1998) ACC 512.)”

30. In cases of motor accidents, the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is, therefore, required to be paid for prospective pecuniary loss, i.e. future loss of income/dependency suffered on account of the wrongful act.

31. Keeping in view all the facts and circumstances brought on record, I am of the view that the compensation as awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

32. Before parting with, it may be pointed out that it is a common experience of this Court that the claimants very often do not mention the specific age of the victim or his/her legal heirs.

33. In the absence of any proof with regard to the date of birth of the victim or his/her legal heirs, it becomes difficult to adopt a proper multiplier.

34. Under these circumstances, all the Tribunals are directed to ensure that whenever, any claim petition is filed before them, the exact date of birth of each of the claimant, as well as of the victim is mentioned in the petition. The claimants, along with the petition, should file the photocopies or attested copies of their birth certificate or school leaving certificate and that of the victim, as the case may be. Since registration of every birth is compulsory in the National Capital Territory of Delhi, so there should not be any difficulty for claimants to file such documents.

35. However, in case any of the claimant has not obtained birth or school leaving certificate, as the case may be, then he/she should mention his/her exact date of birth, in the petition duly supported by the affidavit.

36. Registrar General is directed to send copy of this judgment to all the Tribunals, for information and compliance.

37. The present appeal is, therefore, dismissed.

38. No order as to costs.

39. Trial Court record be sent back.

September 11, 2008
Bisht

V.B.GUPTA, J.