

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

MAC APPEAL No.719/2006

% Judgment reserved on: 6th May, 2008

Judgment delivered on: 13th May, 2008

National Insurance Company
R.O.No.2, 2E/9,
Jhandewalan Extn.
New Delhi-55.

...Appellant

Through:Mr.S.L.Gupta, Adv.

Versus

1.Smt.Pinki Devi,
W/o Late Tarkeshwar

2.Master Tanmaya Kumar,
S/o Late Tarkeshwar

(Through his mother and natural guardian
Respondent No.1)

3. Smt.Shanta Devi
W/o Late Rajender Singh,

All Respondent Nos. 1 to 3 are resident of
H.No.17, Village & P.O., Kolbara,
P.S. Saraiya Distt.
Muzaffarpur, Bihar and also at Present
C-92, Amar Jyoti Colony, Shahbad, Delhi.

4.Sh.Sarabjit Singh, S/o Sh.Ram Singh,
R/o 6/122, Samrala,Ludhiyana,
Punjab and also at 1 No. 122, Ward No.6,
Mohalla Himmat Nagar, P.S. &
Tehsil Samarla, Distt. Ludhiyana, Punjab (Driver)

5. Sh.Manpreet Singh, S/o Sh.Joginder Singh,
Village and P.O.Muskabad,
The Samrala, Ludhiana,
Punjab and also at C/o Malwa Sweets,
Main Chowk, P.S. and Tehsil Samrala,
Distt. Ludhiyana, Punjab (Owner) ...Respondents
Through: Nemo.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 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.

National Insurance Company has filed this appeal under Section 173 of Motor Vehicles Act, 1988 (for short as 'Act') seeking reduction of the amount of the award passed by Sh.A.K.Chawla, Judge MACT (for short as 'Tribunal'), Delhi.

2. The brief facts of the case are that on 26th March, 2004 at about 11.p.m. deceased Tarkeshwar was going to his house on scooter No.DDJ-953 and when he reached Prem Bari Pul, Red light, Ring Road, a Qualis Car No.PB-01-4338 which was being driven by its driver who is respondent no.4 herein, at a high speed, rashly and

negligently came from behind and violently hit the scooter of the deceased. As a result thereof deceased sustained fatal injuries and died on 2nd April, 2004. Deceased was aged about 22 years and a hoarding designer and painter, earning Rs.5,000/- per month. Respondent No.5, herein is the owner of offending vehicle whereas the appellant is the insurer.

3. The learned Tribunal vide impugned judgment dated 1st July, 2006 passed an award in the sum of Rs.6,55,000/- in favour of the claimants who are respondents 1 to 3 in the present appeal. In addition, the learned Tribunal awarded interest @ 8% per annum from the date of filing of the petition till realization.

4. Being dissatisfied with the award passed by the Tribunal, Insurance Company has filed present appeal and has sought reduction of the amount of the award passed by the Tribunal.

5. Notice of this appeal was issued to respondents 1 to 3 only, who are the claimants in this case. However, none appeared on behalf of the claimants.

6. The trial court record has been summoned in this case and I have heard the learned counsel for the appellant.

7. It has been contended by the learned counsel for the appellant that vide order dated 1st June, 2005 of the Tribunal, the Insurance Company has been granted permission under Section 170 of the Act to contest the case on quantum as well as on negligence.

8. It is further contended that the accident in the present case has occurred due to negligence of the deceased who was driving his scooter rashly and negligently and in the alternative it is a case of contributory negligence, since the driver of offending car has appeared in the witness box and has stated that the scooterist got injuries on account of hitting the divider and not his car.

9. The other contention is that in the present case, there is no proof of future prospects of the deceased but even then the Tribunal has taken into consideration the future prospects and has doubled the income of deceased. Further, the multiplier applied is also on the higher side.

In support of his contention, learned counsel for appellant has relied upon a decision of the Apex Court in ***Bijoy Kumar Dugar v. Bidya Dhar Dutta and Others, (2006)***
3 Supreme Court Cases 242.

10. The first point which arises for consideration is as to whether the accident took place due to rash and negligent driving on the part of the deceased or due to rash and negligent driving on the part of the car driver or it is a case of contributory negligence. The relevant findings of the Tribunal are reproduced herein:-

“No eye witness to the occurrence of the accident has been examined. Challan filed Ex.PX, however, leaves no doubt that the scooter driven by the deceased as also the offending vehicle were found at the spot after the accident and seized by the police. Attested copies of the mechanical inspections of the scooter and the offending vehicle, which form part of the copy of the challan mark AY do show the front bumper body of the offending vehicle scratched from the left side and indicator light damaged while there has been fresh damage to (i) the left rear body, side guard and foot rest and indicator light damaged; (ii) right side body scratched and dented; (iii) hand brake lever broken; (iv) front wheel mudguard dented & scratches from front side. Fresh damages on the scooter and the offending vehicle, which were found at the spot, do clearly indicate the involvement of the offending vehicle in the accident. Extent of damages to the scooter driven by the deceased and the fatal injuries

sustained by him, reasonably indicate the gravity of the collision. MLC as also the PM report forming part of the challan leave no doubt that the deceased died on account of the injuries sustained in the accident. Respondent No.1 has been the driver of the offending vehicle, has not been specifically denied in the written statement filed. Impliedly thereby, there is admission of fact that the respondent No.1 was the driver of the offending vehicle. Of course, as per the challan also, driver-respondent No.1 was arrested at the spot. Though, the respondent No.1 in his testimony has deposed that the deceased came on the two wheeler scooter from the left side and took a turn on the right side at a fast speed but hit the divider and there upon fell far on the other side while his scooter came and hit his car, no such factual plea was ever taken or even impliedly mentioned in the written statement, that came to be filed on behalf of respondent no.1 & 2. Challan filed by the police also does not support such testimony of R1W1. In view thereof, contention raised on behalf of the respondents that the deceased sustained injuries, on account of his own negligence in driving the scooter, which hit the divider first and resulted in accident, is wholly unfounded and baseless. Extent of damage to the scooter driven by the deceased and the fatal injuries sustained by the deceased, are strong circumstances, to show that the offending vehicle was not only involved in the accident but was also being driven rashly and negligently. Needless to say, while deciding the culpability and involvement of a vehicle in an accident, the Tribunal is not required to be too technical but decide the cases on preponderance of evidence in order to take special care that the innocent victims do not suffer and the drivers and owner do not escape liability merely because of doubt. In ***Sukhdev***

Singh & Ors. Vs. Vinod Kumr & Ors., 107 2003 DLT 590 it was held as follows:-

“The Tribunal while deciding the culpability and involvement of a vehicle in the accident is not required to succumb to niceties, technicalities and mystic maybes but are required to decide the cases on preponderance of evidence. The Tribunal while deciding such cases must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable.”

In view of the foregoing, I have no hesitation in concluding that the offending vehicle was involved in the accident and that the circumstances show that it was being driven rashly and negligently at the time of the occurrence of the accident. When that is so, the contention raised on behalf of the respondents that though an affidavit of a purported eye witness to the occurrence of the accident having been filed by the petitioners but their failure to produce him before the court, adverse inference gets drawn against the involvement and the rash and negligent driving of the offending vehicle, to my mind, is meritless.”

11. The driver of the offending vehicle though has appeared in the witness box but he has taken contradictory plea in his written statement as well as in his evidence.
12. In the written statement filed by the driver of the offending car, there is a total denial of the accident. As per

para 14 to 17 of the written statement, the defence of the driver of the offending vehicle is that:-

“No accident took place with vehicle No.PB-01-4338.”

13. Further, in reply to sub-para 23, it has been stated that “the answering respondent was not the driver at the time of the accident and the said vehicle was not involved in the accident.”

14. On the other hand, Insurance Company in its written statement has taken contradictory stand and has admitted that the alleged vehicle was being driven by a person but it was without the permission or authority of the insured. The relevant para of written statement is No.6 and it read as under:-

“6.That the answering respondent denies all its liabilities as alleged vehicle was being driven by a person without the permission or authority of the insured and the said vehicle was being used contrary to the terms and conditions of the Insurance Policy, and was being driven by its driver without holding a proper and valid driving license or at the time of the driving the said vehicle he was disqualified for holding or obtaining a driving license during the period of disqualification. Therefore, the claim petition of the petitioners is liable to be dismissed.”

15. Now, when the driver of the offending car appeared in the witness box as RW-1, he admits that on 26th March, 2004, that is, on the date of accident, he was driving the car, as in his examination-in-chief, he states that on 26th March, 2004, he was returning from the Airport, and reached near Saraswati Vihar, Metro Station and was crossing the road, at that time, the deceased, who was at a two-wheeler scooter came from left side and took a turn on the right side at a fast speed and hit the divider. On hitting the divider, he fell far on the other side, whereas his scooter hit his car. The scooterist got injured on account of his own rash and negligent driving and on account of hitting the divider and not his car.

16. So, during the course of evidence, the driver of the offending car has admitted that on 26th March, 2004, he was driving the car but the accident occurred due to rash and negligent driving on the part of the deceased.

17. So, this defence taken by the driver of the offending vehicle in his written statement, is falsified from his statement given in the Court. In the written statement, the driver of offending vehicle has taken a stand that he was

not driving the car at all, while in evidence he has admitted that he was driving the car but the accident has taken place due to negligence driving on the part of the deceased.

18. In view of the contradictory stand taken by the driver of the offending vehicle, no reliance can be put on his statement.

19. Since the factum of the accident stand proved in this case and the Tribunal has given justifiable reason for arriving at the conclusion that the accident took place due to rash and negligent driving on the part of the car driver, I see no reason to differ with the finding of the learned Tribunal.

20. Coming to the question of quantum, no cogent evidence has come to be led as regards the income of the deceased. There is also nothing on the record to show any educational or technical qualification of the deceased. In the absence of any evidence, the Tribunal has determined the income of the deceased on the basis of Minimum Wages Act. The accident occurred on 1.02.04. At the time of accident, the income of an unskilled worker were

Rs.2862.90 p.m., which is rounded off taken by the Tribunal to Rs. 2,900/- p.m.

21. In ***Sarla Dixit & Ors. v. Balwant Yadav & Ors.*** **1996 ACJ 581**, the Court has observed as under;

“The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, to the maximum which he would have otherwise got had he not died a premature death.”

22. Applying the said principle, the income of the deceased was taken by the Tribunal (Rs.2,900 + Rs. 5,800/- = Rs. 8,700/- divided by 2) at Rs. 4,350/- and after making 1/3rd deduction towards the personal expenses, the financial dependency of the claimant was assessed at Rs.2,900/- per month. Thus, the Tribunal has rightly taken this as the income of deceased.

23. It is well settled proposition that while determining the quantum of compensation, the future prospects are also required to be taken into consideration. Though the claimants have failed to produce any cogent evidence on record, but once the resort has been made to the Minimum Wages Act, therefore, the increase in the future wages

under the Minimum Wages Act can certainly be taken into consideration. Perusal of the Minimum Wages Act shows that in the past, within a period of 10 years, the minimum wages almost get more than double; for instance, minimum wages of unskilled workman in the year 2000 were Rs. 2524/- under the Minimum Wages Act. The said minimum wages in the year 2007 for the same class of unskilled workman came to be Rs. 3470/- under the Act. This increase is not due to any promotion of unskilled workman or any kind of advancement in his career but the same are due to increase in the price index and cost of living which are the determining factors taken into consideration for increasing the wages under the Minimum Wages Act. The nature of the job of unskilled workman will not change as the same shall remain unchanged.

24. The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance

and survival of the workman class. Keeping this in view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.

25. Now, coming to the question of multiplier, the Apex Court in the case of **U.P. State Road Transport Corpn. v. Krishna Bala & Ors.**, III (2006) ACC 361 (SC), has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

“The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In, ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

26. In the present case, the age of the deceased was 22 years and the age of the wife of deceased is 20 years. Keeping in view these facts, the Tribunal adopted

the multiplier of 17. Considering the age of the deceased and the principles as set out above, the multiplier 17 as adopted by the Tribunal is clearly defensible.

27. Under these circumstances, no infirmity can be found with the impugned judgment of the Tribunal and thus, there is no merit in this appeal and the same is dismissed.

28. No order as to costs.

29. Copy of this judgment be sent to trial court and trial court record be sent back forthwith.

May 13, 2008
Bisht

V.B.GUPTA, J.