

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 1st December, 2011

Pronounced on: 19th December, 2011

+ **MAC APP. 596/2010**

DELHI JAL BOARD & ORS. Appellant
Through: Mr. U.N. Singh, Advocate

Versus

SUNIL KUMAR & ORS. Respondents
Through: Mr. Ashok Popli Advocate for
Respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. Aggrieved by an award dated 28.05.2010 passed by the Motor Accident Claims Tribunal (the Tribunal), the Appellant Delhi Jal Board has filed this Appeal on the ground that their tanker DL-IM-0308 was not involved in the accident. It is averred that the compensation awarded is excessive.
2. On 04.07.2009 at about 12:15 P.M. PW-2 Kuldeep Kumar was proceeding to his in-laws house along with his sister-in-law Sonia (brother-in-law's wife) on his motor cycle number HR-10E-8342. When they reached near Sai Apartments, Nathu Pura a water tanker number DL-1M-0308 came from behind and hit the motor cycle. The deceased and PW-2 fell down on the road

and sustained injuries. Sonia was removed to Sushruta Trauma Centre where she was declared brought dead. The Tribunal on appreciation of the evidence found that the accident took place because of rash and negligent driving of the tanker by its driver Satya Dev Appellant No.3. It was claimed before the Tribunal that the deceased was looking after the house and assisting her husband in running the milk dairy work.

3. Relying on *Lata Wadhwa v. State of Bihar 2001 (8) SCC 197*, the Tribunal took the value of the domestic services rendered by the deceased to be ₹ 3,000/-, the Tribunal applied the multiplier of 18 as per the deceased's age and calculated the loss of dependency as ₹ 6,48,000/-. The Tribunal awarded an overall compensation of ₹ 6,83,000/- after adding the compensation towards conventional heads like loss of consortium, loss of estate, funeral expenses and loss of love and affection.
4. The contentions raised on behalf of the Appellants are:-
 - (i) Tanker number DL-IM-0308 was not involved in the accident and the vehicle was falsely involved later on.
 - (ii) The quantum of compensation is exorbitant and excessive.

CONTENTION No. (i)

5. It is contended by the learned counsel for the Appellants that number of the offending tanker was not given in the FIR. Any

tanker could have been involved in the accident; tanker number DL-IM-0308 was seized by the police after 50 days of the accident and was falsely implicated in the case. The learned counsel for the Appellants referred to the extract of the entry book maintained in respect of the vehicle number 0308 to emphasize that the vehicle departed from Chandrawal Water Works at 11:05 AM and returned at 12:30 PM., thereafter the vehicle again left at 1:05 P.M. and returned at 3:00 P.M. Since the accident allegedly took place at 12:45 P.M., the offending vehicle could not have been present at the place where the accident took place.

6. In order to prove the negligence, the Claimants examined Kuldeep Kumar PW-2 an eye witness to the accident and the deceased's brother-in-law. He was driving the motor cycle number HR-10E-8342 at the time of the accident. He deposed that on 04.07.2009 at about 12:15 P.M., he along with Smt. Sonia (the deceased) was proceeding to his in-laws' house in Nathu Pura, Burari on his motor cycle number HR-10E-8342. When he reached near Sai Properties, Nathu Pura, a water tanker bearing number DL-1M-0308 came from behind and hit the motor cycle and on account of the forceful impact, they fell down on the road and suffered injuries. Somebody informed the PCR which reached the spot and removed them to the Trauma Centre. He was given first aid while Smt. Sonia was declared brought dead. He narrated the entire incident to the police on

the basis of which FIR No.209/2009 was recorded in the Police Station Burari. In cross-examination, the witness deposed that he did not give the number of the offending vehicle while he was in the hospital. He testified that when he went to the Police Station from the hospital after 2/3 hours he disclosed the number of the offending vehicle to the police. He denied the suggestion that initially he disclosed the number of the offending vehicle as DL-1M-0309 and after a few days he changed the number as DL-1M-0308. He admitted that he did not see the driver of the tanker as he was hit from the helper's side.

7. The Appellants examined Satya Dev, driver of the tanker number DL-IM-0308 who testified that he did not cause any accident on 04.07.2009 at 12:45 P.M. He deposed that he was inside the Water Works at 12:45 P.M. He deposed that on 22.08.2009 at about 9:30 A.M. one police personnel seized his licence from him and also took his vehicle to the Police Station.
8. The Appellant Delhi Jal Board also filed affidavit of one Sherdin to prove the entries in the log book and the entry book. According to these entries, vehicle number 0308 departed from the Water Works at 11:05 A.M. and returned at 12:30 P.M. Thereafter, the vehicle again left the Water Works at 1:05 P.M. and returned to Chandrawal Water Works at 3:00 P.M.

9. It is important to note that in support of the Appellants' version regarding non-involvement of the vehicle number DL-1M-0308 it filed Affidavit Ex.R1W1/A of RW1 Subash Chauhan. The witness testified that on 22.07.2009 some police officials from PS Burari came to him and inquired about the water tanker No.DL-1M-0309 from him and informed him that the same had caused the accident on 04.07.2009 at about 12:30 P.M. He informed the police officer that the said water tanker was not on the route on the given date. The police officer then told it might be a water tanker number DL-1M-0308.
10. Thus, according to the Appellants themselves, the police was investigating regarding the involvement of tanker number DL-1M-0309 which also belonged to the Delhi Jal Board. Although, I do not see any reason to disbelieve PW-2's testimony regarding the involvement of vehicle number DL-1M-0308. Even if it is assumed that the said witness had given the number of tanker as DL-1M-0309, there can be a bonafide error in mentioning the number of the tanker. Since the said tanker was not on route and admittedly tanker DL-1M-0308 was on the route where the accident occurred, it would be reasonable to conclude that the accident was caused by tanker number DL-1M-0308.
11. This accident took place on 04.07.2009 and the driver (R3W1) was cross-examined after eight months of the accident i.e. on 15.03.2001. In his cross-examination he admitted that he was

arrested and released on bail by the police. He admitted that he did not lodge any written complaint to any higher authority regarding his false implication. He admitted that he was driving vehicle number DL-1M-0308 on 04.07.2009 and that there was no enmity between him and the injured.

12. In a Claim Petition under Section 166 of the Motor Vehicle Act, the involvement of the vehicle and the rashness and negligence has to be established on the test of preponderance of probabilities. It was mentioned, in the FIR recorded immediately after the accident that, the accident was caused by a water tanker. PW-2 says that he gave the number of the tanker just after two hours to the IO as DL-1M-0308. RW-1 Subash Chauhan, J.E. examined by the Appellants says that there was some investigation in respect of the involvement of tanker number 0309. Admittedly, tanker number 0309 though belonging to the Delhi Jal Board was not on the route whereas tanker number DL-1M-0308 was on the route. Thus, in all probabilities the accident was caused by the tanker number DL-1M-0308.
13. I would not attach much importance to the entry in the log book that the tanker returned at 12:30 P.M. to the Chandrawal Water Works because the entries are made just by approximation and a few minutes here and there could have been changed at the instance of the tanker's driver.

14. In my view, the Tribunal rightly believed the involvement of the tanker number DL-1M-0308. The manner in which the accident took place as described by PW-2 Kuldeep shows that there was culpable negligence on the part of its driver.

CONTENTION No. (ii)

15. As far as quantum of compensation is concerned, the Tribunal relied on *Lata Wadhwa & Ors. v. State of Bihar & Ors., (2001) 8 SCC 197*. A portion of Para 10 of the report is extracted hereunder for the sake of convenience:-

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in

life. The compensation awarded, therefore should be recalculated, taking the value of services rendered per annum to be Rs. 36,000/-.....”

16. The Tribunal rightly took the value of the services rendered by the housewives as ₹ 3,000/- per month. The multiplier of 18 selected by the Tribunal was appropriate considering the age (22 years). The Tribunal further awarded a sum of ₹ 10,000/- each towards loss of consortium, loss of love and affection and loss of estate, ₹ 5,000/- for funeral expenses. The present case is squarely covered by the judgment in *Lata Wadhwa (supra)*.
17. I do not find any good ground to interfere in the quantum of compensation awarded by the Tribunal. There is no merit in the Appeal; the same is accordingly dismissed. No costs.

(G.P. MITTAL)
JUDGE

DECEMBER 19, 2011

vk