

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

Reserved on : 3rd November, 2011
Pronounced on : 18th November, 2011

+ **MAC.APP. 150/2011**

UNION OF INDIA THR COMMANDANT CRPF

..... Appellant

Through: Ms. Sapna Chauhan Advocate.

versus

SARITA & ORS

..... Respondent

Through: Mr. Navneet Goyal Advocate with
Ms. Suman Rawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

- | | |
|---|----|
| 1. Whether reporters of local papers may be allowed to see the Order? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the Order should be reported in the Digest? | No |

J U D G M E N T

G. P. MITTAL, J.

CM APPL.3573/2011 (delay) in MAC.APP. 150/2011

1. There is a delay of 75 days in filing the appeal. For the reasons as stated in the application it is allowed, the delay of 75 days in filing the appeal is condoned.

MAC.APP. 150/2011

2. Appellant Union of India impugns the award dated 08.07.2010

passed by the Motor Accidents Claims Tribunal (the Tribunal) by which the compensation of ₹ 7, 41,460/- was awarded to the Respondents being dependents of deceased Om Prakash who was aged about 35 years and ten months at the time of the accident. The Tribunal opined that the accident resulting in the death of Om Prakash was caused by the culpable negligence of Shiv Kumar, the driver of the truck/water tanker No.DL-1GA-0731 which was owned by the Appellant.

3. Respondents No. 1 to 4 during inquiry before the Tribunal claimed an income of ₹ 7,000/- per month from the service and ₹ 5,000/- per month from the business of selling milk. In the absence of any proof of his income, the Tribunal took the minimum wages of a non-matriculate i.e. ₹ 3464/- per month; added 50% towards future prospects; deducted 1/4th i.e. ₹ 1299/- towards the personal expenses as the number of dependents were four; relying on *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121* applied the multiplier of 15 and computed the dependency at ₹ 7, 01,460/-. The Tribunal further awarded a sum of ₹ 10,000/- on account of loss of consortium, ₹ 10,000/- for loss of love and affection; ₹ 10,000/- each for loss of estate and for funeral expenses and thus awarded a total compensation of ₹ 7,41,460/-.
4. The findings of the Tribunal is challenged on two grounds:-

- (i) The fatal injuries suffered by the deceased Om Prakash were not on account of the accident with tanker number DL-1GA-0731.
 - (ii) Even if the accident took place with tanker number DL-1GA-0731, there was no negligence on the part of its driver Shiv Kumar.
5. To substantiate the first contention, Ms. Sapna Chauhan learned counsel for the Appellant took me through the injuries on the MLC Ex.PW-1/4 and the Postmortem Report Ex.PW-1/5 and argued that the deceased left Lal Bahadur Shastri (LBS) Hospital against medical advice and might have suffered the fatal injuries while on the way from LBS Hospital to Holy Family Hospital as the injuries on the MLC and the Postmortem Report did not tally with each other. This is true that in the MLC there is mention of just one crush injury over right foot with fresh oozing whereas in the Postmortem Report No.43/06 dated 25.02.2006 (Ex.PW-1/5) following injuries are mentioned:-

- “1. Condition of limbs : deformity and swelling of right thigh.*
- 2. Eyes: Clear cornea hazy.*
- 3. Tread Mark.... Abrasion 33 x 13 cms over right upper part at thigh externally towards knee with 5 abrasion from top to bottom 13 x 3 cms, 12 x 2 cms, 10 x 4 cms, 8 x 3 cms horizontally placed.*
- 4. Multiple abrasion 4 in no., 4 cms apart over lower frontal right leg 3 x 1 to 2 x 1 cm in size.*

5. *Multiple abrasions, 3 in no. 3 x 2 to 2 x 2 cms. in size over inner aspect at left leg and medial mailings."*

6. It is important to note that though in the MLC Ex.PW-1/4 only one crush injury was noticed but in the treatment sheet dated 24.07.2006 at 7:00 PM following three injuries were noticed:-

*"(1) CLW cut over right foot dorsal aspect
10.0 x 2.0 cm x 1.0 cm.*

*(2) CLW cut in right 1st webspace 2.0 cm x
1.0 cm x 0.5 cm.*

(3) Abrasion over left ankle lateral aspect."

7. The deceased was in the LBS Hospital till about mid night when one Braham Singh (the deceased's relative finding that the deceased was not getting adequate treatment) got him discharged from the hospital against medical advice on the ground that he was taking him to a private hospital for his treatment. The MLC OPD card No. 08597 prepared in the Holy Family Hospital shows the time of arrival of the deceased as 12:30 AM on 25.06.2006. Thus, it is evident that the deceased reached Holy Family Hospital just within half an hour. In the Holy Family Hospital also only two injuries were noticed. It is, therefore, clear that a few abrasions as mentioned in the Post Mortem report were either not noticed by the medical officer in LBS Hospital and Holy Family Hospital or the same were suffered while the dead body was removed to the mortuary. Apart from the crush injury, the other injuries in the shape of abrasions were inconsequential. In any case it cannot be said

that those abrasions were caused by any subsequent accident after the deceased was removed from LBS Hospital and was taken to Holy Family Hospital. An injured has a right to get better medical aid and, therefore, if the deceased's relations were not satisfied with the treatment they were justified in shifting him to a better equipped private hospital. Unfortunately, despite the efforts of deceased's relations he could not survive and was declared dead in Holy Family hospital. It is too farfetched to say that the deceased sustained injuries in another accident. The contention raised on Appellant's behalf is liable to be rejected.

8. Turning to the question of negligence on driver Shiv Kumar's part FIR No.97/2006 under Section 279/304-A IPC was registered against him in respect of this accident at Police Station Kalyanpuri. The Respondents (Claimants) examined Pradeep Kumar as an eye witness to the accident as PW-2. He testified that on 24.02.2006 at about 6:30 PM he along with Om Prakash (the deceased) was proceeding to Khichripur from East Vinod Nagar. Om Prakash was walking on the pavement a water tanker number DL-1-GA-0731 which was being driven in a rash and negligent manner, came from behind and struck against Om Prakash. He (Om Prakash) came under the tanker and suffered injuries. Om Prakash was pulled out and was removed to LBS Hospital. In cross-examination the witness deposed that the accident took place at a distance of 100 yds

from Ajay Medical Store. Om Prakash was four feet ahead of him. They were returning after attending a marriage in East Vinod Nagar. The witness admitted that there was heavy traffic on the road and the front wheel ran over Om Prakash. He showed his ignorance if Om Prakash had consumed alcohol on that day.

9. The site plan Ex.PW-1/6 prepared in the criminal case was also filed before the Tribunal which depicted the place of the accident at Mark A which is on the pavement. This clearly reveals that the accident took place while the deceased was walking on the pavement, which speaks volume for rashness and negligence on the part of the driver of the tanker number DL-1-GA-0731. Of course, an Affidavit Ex.R3W1/A of Shiv Kumar (the tanker's driver) was filed wherein he testified that the speed of the tanker was hardly 10-15 km per hour as the accident had taken place when there was heavy traffic on the road. The speed of a vehicle by itself is not the criteria to determine rashness or negligence. The fact that the tanker swerved towards left side and struck against the deceased while he was walking on the pavement clearly indicates that there was culpable negligence on the part of the driver. Moreover, driver Shiv Kumar testified in his Affidavit Ex.R3W1/A that the deceased was riding a cycle at the time of the accident which is contrary to the stand of RW-2 Constable Ashok Kumar who testified in para 3 of the Affidavit that a cyclist dashed against

Om Prakash from behind who fell between the left front and rear wheels of the water tanker. The testimonies of RW-2 Constable Ashok Kumar and RW3 Shiv Kumar (the tanker's driver) do not inspire confidence.

10. Of course, it has come in the MLC that the deceased was smelling of alcohol. At the same time the MLC reveals that the patient was fully conscious and oriented. Thus, smell of liquor in any case cannot lead to an inference that the deceased himself was responsible for the accident. The Tribunal rightly held that there was negligence on the part of Shiv Kumar, driver of tanker number DL-1GA-0731, owned by the Appellant.
11. The Tribunal rightly applied the multiplier of 15 considering the age of the deceased to be close to 36 years. Of course, future prospects cannot be considered unless the deceased was in settled employment and there was no specific evidence as to the future prospects. But, it has to be borne in mind that the minimum wages are increased by the govt. from time to time to counter inflation and give a better standard of living to the lowest paid workers. In *UPSRTC v. Munni Devi, IV (2009) ACC 879* this Court held that the minimum wages got almost doubled within a span of ten years and, therefore, 50% of the minimum wages should be added to reach the average income of the deceased. Similar view was taken in *National Insurance Company Ltd. V. Renu Devi & Ors., III (2008) ACC 134* and

Narinder Bishal & Anr. v. Rambir Singh & Ors. MAC APP. 1007-08/2006 decided by this Court on 20th February, 2008.

12. Therefore, even if future prospects were not to be considered in the case of the deceased, he was entitled to an addition of 50% of the minimum wages on account of increase in minimum wages to meet inflation and to provide better standard of living.
13. The compensation awarded is just, proper and reasonable and does not call for any interference.
14. I do not find any merit in the appeal; the same is accordingly dismissed. No costs.
15. Pending applications also stands disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 18, 2011

vk