

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

Date of decision: 3rd December, 2012

+ **MAC.APP. 90/2007**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Hanu Bhaskar, Adv.

versus

SH. MOHINDER TOKAS & ORS. Respondents
Through: Mr. D.N.Goverdhan Adv. with
Mr. Ayush Chandra, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Delhi Transport Corporation (DTC) impugns a judgment dated 25.08.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹4,25,000/- was awarded for the death of Sanjeev Tokas who died in a motor vehicle accident which occurred on 19.06.1998.
2. During inquiry before the Claims Tribunal, it was claimed that on 19.06.1998 the deceased was riding on the pillion seat of the two wheeler No.DL-9S-C-9701 which was being driven by Parmod Kumar PW-3. The said two wheeler was proceeding from the side of village Munirka towards Hotel Hyatt Regency. When the two wheeler reached near the crossing of Sector 4 and 5, R.K. Puram, a bus No.DVP-6265, owned by the Appellant DTC and driven by its driver (Rajpal) in a rash and

negligent manner overtook the two wheeler from its left side and tried to negotiate a U-turn suddenly, as a result, the two wheeler struck in the middle of the right side of the bus. The deceased was flung off the two wheeler and was crushed under the right rear wheels. An FIR No.361/1998 was registered in Police Station R.K.Puram and the DTC bus driver was prosecuted for an offence under Section 279/337/304-A IPC.

3. It was claimed that the deceased was working as an Executive Secretary with Raas Intratech Pvt. Ltd., Basant Lok, Vasant Vihar, New Delhi on a salary of ₹6,000/- per month. He was survived by his widow Indu Bala and parents.
4. The widow re-married during the pendency of the Claim Petition. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of DTC bus by its driver. It declined to believe that the deceased was employed as an Executive Secretary with Raas Intratech Pvt. Ltd., it, therefore, took the minimum wages of a Matriculate at the time of the accident and at the time of the decision of the Claim Petition and awarded the loss of dependency on the mean thereof.
5. The following contentions are raised on behalf of the Appellant DTC:-
 - (i) There was no negligence on the part of DTC bus driver. Parmod Kumar himself was negligent and dashed in the rear of DTC bus which was already negotiating a U-turn. PW-2 Balwan Singh produced by the Respondent was not reliable. Parmod Kumar supported the Respondents in order to avoid his own liability. It is

urged that finding on negligence is liable to be reversed. PW-3's negligence can also be inferred from the fact that he did not possess a valid driving licence to drive the two wheeler at the time of accident.

- (ii) The compensation awarded is on the higher side in as much as the income of the deceased at the time of the accident only is to be taken into consideration to award the loss of dependency. The Claims Tribunal erred in considering the minimum wages in the year 2006.

- 6. On the other hand, the learned counsel for the Respondents argues that negligence on the part of the DTC bus driver was amply proved for the purpose of a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act). The compensation awarded by the Claims Tribunal is on the lower side. The Claims Tribunal ought to have believed the Salary Certificate Ex.PW-1/1 which was duly proved by PW-1 examined by the Respondents. It is stated that this Court while exercising its power under Order XLI Rule 27 CPC to do complete justice between the parties.

NEGLIGENCE

- 7. I have before me the Trial Court record. In order to prove negligence, the Respondents examined PW-3 Parmod Kumar and PW-4 Mahinder Tokas. The Claims Tribunal dealt with the issue of negligence as under:-

“PW3 who is an eye witness to this accident, deposed that on 19.6.98 he along with his friend Sanjeev Tokas were going on a Scooter No.DL-9SC-9701. He was driving the said scooter with care and caution at about 4 pm when they reached at the crossing of Sector IV and V R.K.Puram, a DTC bus No.6265 came from

back side and suddenly without any indication or horn took a U turn to its right side at a high speed and in that process bus hit his scooter, as a result of which Sanjeev Tokas fell down on the left side of the road while he fell on the central verge of the road. Deceased was ran over under the wheel of the bus, he sustained injuries on his legs and head. PW.2 Sh. Balwan Singh has also corroborated the version given by PW3.

PW2 and PW3 have been cross-examined on behalf of respondents, however, nothing has been asked with regard to rash and negligent driving of offending vehicle. Nothing such came out in their cross-examination so as to disbelieve their statement. There is nothing on the judicial file to disbelieve their statements.

RW1 in his statement stated that on 19.6.98 he was driving DTC Bus No.DBP-6265 on route No.621 from Mori Gate to Munirka. When he reached Munirka crossing at about 4.30 pm he was taking turn on his right hand side, during the process of turning a scooter came from his back side and hit against his bus due to which both rider of the scooter had fall down. He was not at fault, scooter driver was at fault.

From the examination in chief of RW.1 it is clear that place, time and manner of accident is not dispute. RW1 has only deposed that fault was of the scooter driver. RW1 has deposed that scooter had hit his bus from the back side, if the scooter had hit the bus from the back side of bus how can R.1 had seen that driver of the scooter was at fault. In his cross examination R.1 has admitted that he was arrested by the police for causing this accident. He is still facing criminal trial. He had not lodge any complaint to the police authorities for his false implication in this case. He has also admitted that he had not taken the victim to the hospital. In view of above discussion this Court is of opinion that R.1 is not a trustworthy witness.

In these circumstances this court is of opinion that petitioners have proved their case that this accident on 19.7.1998 had taken place because of rash and negligent driving of bus no.DEP-6265 by its driver in which deceased had died, as pleaded by the petitioners in their petition.....”

8. It has to be borne in mind that while taking a right turn or a U turn, a

heavy vehicle like bus should be on the extreme right side of the road. If it is not on the extreme right side then while taking a U turn, the driver of a heavy vehicle must be mindful of the traffic coming parallel to the heavy vehicle or even coming just behind the heavy vehicle. PW-3 categorically deposed about the manner of the accident. He testified that the bus overtook his two wheeler and took a turn on the right side without an indication. PW-3 denied the suggestion that the accident was caused due to his own negligence as the bus was already taking a U turn when the two wheeler hit the bus. In his examination as RW-1, the driver has supported his own version that the two wheeler hit the bus while the bus was already taking a U-turn. As I have already observed above, a driver of a heavy vehicle like a bus has to be mindful of the traffic coming behind while taking a right turn or a U turn. So, even if the DTC bus driver was already ahead of the two wheeler and took a sudden turn without waiting for the traffic to clear, the bus driver cannot escape his negligence in case of an accident.

9. Admittedly, a criminal case was registered against the driver which supports PW-3's version. In a Claim Petition under Section 166 of the Act, the negligence is required to be proved on the touchstone of preponderance of probability.
10. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind

that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

11. The observations of the Supreme Court in *Bimla Devi* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
12. Hence, in view of above, the culpable negligence on the part of the DTC bus driver is sufficiently proved.

QUANTUM OF COMPENSATION

13. As stated earlier, the Respondents claimed that the deceased was working as Executive Secretary with Raas Intratech Pvt. Ltd. and was getting a salary of ₹6,000/- per month. The Claims Tribunal declined to believe the Salary certificate and held as under:-

“...It is worth mentioned (sic mentioning) here that name of deceased appeared in the last column of attendance sheet. It has been added in pen writing while names of other employees are in computer print. Deceased was 12th class passed only but according to the certificate he was working as Executive Secretary which is not possible. In petition it has not been mentioned so that deceased was working as Executive Secretary. Had he been working as Executive Secretary, it would have also mentioned in the petition. In these circumstances, evidence of petition does not inspire confidence on this point. This Court is of opinion that deceased could not earn 6000/- pm as claimed in the petition hence this Court is assessing earning of deceased according to Minimum Wages Act.”

14. A perusal of the educational qualification certificate shows that the

deceased passed his 12th examination in the year 1993. This accident took place in July, 1998. The Respondents claimed that the deceased had joined Raas Intratech Pvt. Ltd. just a few weeks before the accident. As stated earlier, he was only 12th passed. There is no whisper as to what was the deceased doing for five years after passing his 12th standard. In the Assessment Year 1999-2000, any income beyond ₹50,000/- was subject to income tax. Deceased was only 12th standard. It is possible that on the basis of his past experience or previous service with other companies, he might be appointed as an Executive Secretary with Raas Intratech Pvt. Ltd.. But, no evidence with regard to his previous employment and the salary earned has been pleaded or proved. Taking all these circumstances into consideration, the Claims Tribunal rightly declined to believe the Salary Certificate Ex.PW-1/1.

15. It is well settled that income of the deceased at the time of the accident is to be taken into consideration for determining the loss of dependency (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*). If there is evidence with regard to good future prospects, an addition of 50% is to be made if the deceased is aged less than 40 years. (*Sarla Verma*). If there is no evidence with regard to the future prospects, an addition of only 30% is permissible on the basis of the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
16. It is urged by the learned counsel for the Respondents No.1 and 2 that multiplier is to be applied as per the age of the deceased. The Claims Tribunal erred in applying the multiplier on the basis of the age of the deceased's parents. (Reliance is placed on *Mohan Singh v. Kashi Bai &*

Ors., (2009) 4 SCC 507 and United India Insurance Company Limited v. Bindu & Ors., (2009) 3 SCC 705).

17. This Court in *Vijay Laxmi & Ors. v. Binod Kumar Yadav & Ors.*, MAC APP.1148/2011 decided on 03.01.2012 noticed the Supreme Court judgments in *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362; G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176; New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1; National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65*, decided on 04.07.2011 and *Manam Saraswathi Sampoorana Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785*, and held that the multiplier has to be as per the age of the deceased or that of the Claimant/Claimants whichever is higher. Paras 4,5,7 and 8 of the report are extracted hereunder:-

“4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362, where the Supreme Court relied on G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

“12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, v. Susamma Thomas: (1994) 2 SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited

above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

“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.

The principle was explained and illustrated by a mathematical example:

“The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be

spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.”

5. There is another three Judges’ decision of the Supreme Court in New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1, where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-

“6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.”

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7. In the latest judgment of the Supreme Court in National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667 and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-

“9. This Court in the case of Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

“6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie, AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.”

10. In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours.

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.”

8. Similarly in Manam Saraswathi Sampoorana Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.”

18. At the time of the death, the deceased's widow (Petitioner No.3) was alive. She was one of the recipients of the interim compensation under Section 140 of the Act. It is true that she re-married and her name was deleted from the array of parties. Yet, she would be entitled to

compensation till she got remarried. Thus, the deduction in the case would be one-third of the deceased's income and the multiplier will be as per the age of the deceased's mother.

19. The loss of dependency thus comes to ₹ 3,22,452/- ($2385/- + 30\% \times \frac{2}{3} \times 12 \times 13$).
20. The Claims Tribunal awarded a sum of ₹25,000/- towards loss of love and affection and ₹5,000/- towards funeral expenses. I would further make a provision of ₹10,000/- towards loss to estate.
21. The overall compensation thus comes to ₹3,62,452/- which shall carry interest @ 9% per annum from the date of filing of the Petition till its payment, as awarded by the Claims Tribunal.
22. The compensation of ₹3,62,452/- shall be paid to the Respondents in equal shares after deducting the interim compensation of ₹50,000/-.
23. The excess compensation of ₹62,548/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant DTC.
24. The Appeal is allowed in above terms.
25. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 03, 2012

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