

Vishakha & Ors. vs Shree Pal & Anr. on 3 January, 2012

Equivalent citations: AIRONLINE 2012 DEL 4

Author: G. P. Mittal

Bench: G.P.Mittal

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23rd December, 2011
Pronounced on: 3rd January, 2012

+ MAC APP. 412/2011

VISHAKHA & ORS. Appellants
Through: Ms. Malyika Sharma Advocate with
Mr. Pradeep Kumar, Advocate.

Versus

SHREE PAL & ANR. Respondents
Through: Ms. Garima Parashad Advocate with
Mr. Shadab Khan, Advocate for R-2.

+ MAC APP. 518/2011

U.P. STATE ROAD TRANSPORT CORP. Appellant
Through: Ms. Garima Parashad Advocate with
Mr. Shadab Khan, Advocate.

Versus

VISHAKHA & ORS. Respondents
Through: Ms. Malyika Sharma Advocate with
Mr. Anil Kumar Tomar, Advocate &
Mr. Pradeep Kumar, Advocate for R-1
to R-3.

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

JUDGMENT

G. P. MITTAL, J.

1. These are two cross Appeals; MAC APP. No.412/2011 is preferred by the legal representatives of deceased Amit Kumar for enhancement of compensation, whereas MAC APP. No.518/2011 is filed by the U.P. State Road Transport Corporation (UPSTRC) for reduction of compensation.

2. For the sake of convenience, the Appellants in MAC APP.

No.412/2011 shall be referred to as Claimants and Appellants in MAC APP. No.518/2011 shall be referred to as UPSRTC.

3. As per the averments made in the Claim Petition on 11.01.2009 deceased Amit Kumar was taking his employer N.K. Jain and his family in their car bearing number DL-4C-1513. When the said car reached at Sandhan Pulia, Meerut, Mawana Road, a UPSRTC bus number UP-11T-1353 being driven in a rash and negligent manner came from the front. It hit the car head on resulting into serious damage to the car and injuries to all the occupants. The injuries in Amit Kumar's case proved fatal.

4. The Tribunal found that the accident occurred on account of rashness and negligence on the part of the UPSRTC driver. The Tribunal took the deceased salary as ` 4138/-, after deducting one-fourth towards personal living expenses of the deceased, selected the multiplier of 18, as per the deceased's age and awarded the total compensation of ` 7,45,248/-.

5. The contention raised on behalf of the Claimants is that the Salary Certificate Ex.PW-2/2 was duly proved by PW-2. The deceased was a permanent employee working with OM Logistics Ltd. His ESI and PF contribution was being deducted and paid to the ESI and Employees Provident Fund Account. The allowances such as HRA, Conveyance Allowance, ESI, PF contribution and Bonus were not taken into consideration in taking the deceased's income by the Tribunal. It is contended that the deceased was in a stable employment and was, therefore, entitled to future prospects.

6. On the other hand, it is urged by the learned counsel for UPSRTC that the deceased was guilty of contributory negligence as it was a head on collision. The quantum of compensation; therefore, is liable to be reduced.

7. It is noteworthy that a written statement on behalf of UPSRTC and its driver was filed on 09.07.2009 wherein a plea was taken that the driver of car number DL-1GE-1315 while overtaking another car bearing number UP-15H-1262 came on the wrong side and struck against bus number UP-11T-1353. This defence was not pursued by UPSRTC and it was proceeded ex-parte by order dated 09.03.2010. Even thereafter there were number of hearings, yet UPSRTC preferred not to join the proceedings. The defence taken by UPSRTC was thus abandoned by it.

8. To prove negligence, the Claimants examined Rajender Singh PW-3. He testified that on 11.01.2009 at about 11:00 AM he was going on a motorcycle when he noticed a Maruti Car number DL-4C-1513 proceeding towards Mawana. When he reached near Sandhan Pulia, a U.P. Roadways bus number UP-

11T-1353 came from Mawana side. It was driven in a rash and negligent manner by its driver and collided with the Maruti car. Though, the witness was not cross-examined by UPSRTC as it was ordered to be proceeded ex-parte, yet the Tribunal asked several questions to satisfy itself as to the veracity of the witness.

9. A criminal case being FIR No.12/2009 was registered in Police Station Mawana, Meerut against Sreepal, driver of bus number UP-11T-1353. Thus, even if the defence of UPSRTC is considered, the same was not proved. PW-3's testimony regarding the manner of the accident was not challenged. The Tribunal rightly concluded that the accident was caused due to rash and negligent driving of the driver of bus number UP-11T- 1353.

10. As stated earlier, the salary certificate Ex.PW-2/2 was proved on record which shows that the deceased was getting a salary of `6038/-. The Tribunal erred in excluding the bonus, conveyance allowance and other allowance from the deceased's salary.

11. In National Insurance Co. Ltd. v. Indira Srivastava & Ors., 2008 (2) SCC 763, it was held that all the perks paid to an employee by employer should be included for computation of the deceased's income. Para 10 of the report is extracted hereunder:-

"10. Section 168 of the Act uses the word "just compensation" which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, gratuity and other perks to attract the people who are efficient and hard-working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined....."

12. In Raj Rani v. Oriental Insurance Co. Ltd. (2009) 13 SCC 654;

while relying on Indira Srivastava (supra), the Supreme Court reiterated that apart from Dearness Allowance other allowances payable for the benefit of the family, have to be considered for the computation of the annual income.

13. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., (1977) 2 SCC 745, it was held that dearness allowance, conveyance allowance and other allowances are to be treated as part of the deceased's income.

14. There is distinction between the conveyance allowance and a travelling allowance. Wherever a travelling allowance is paid to an employee to perform his duties this may not be considered as the deceased's income, but where conveyance allowance is paid apart from salary, the same may or may not be spent while travelling to the place of employment. Therefore, where conveyance allowance is paid as part of the salary, the same has to be taken into consideration for computation of the loss of dependency. Deduction towards the personal living expenses is otherwise made to calculate the dependency.

15. Now, I turn to the question whether the Claimants were to be given the benefit of future prospects.

16. Deceased was a regular employee with a Private Limited Company OM Logistics Limited. He joined as a driver on 01.04.2008 and his employment ended on 13.01.2009 because of his unfortunate death in the accident. His date of birth as per the driving licence was 15.12.1980 and his year of birth as per other documents including Ration Card was 1980. Thus, the deceased's age was a little more than 28 years at the time of the accident.

17. Considering that the deceased was in a regular and stable employment, he was entitled to 50% increase in the salary on account of future prospects. Although, the Tribunal applied the multiplier of 18, the same, however, has to be 17 in view of Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, as the deceased was aged about 28 years. The Tribunal rightly deducted one-fourth towards personal expenses, as even if father is excluded from the category of dependency there were the widow, mother and two minor children as dependants on the deceased. The loss of dependency works out as ` 13,85,721/- (i.e. ` 6038/- + 3019 (50%) - $\frac{1}{4} \times 12 \times 17$).

18. After adding notional sum of ` 50,000/- i.e. ` 10,000/- towards loss of consortium, ` 5,000/- towards funeral expenses, ` 25,000/- towards loss of love and affection and ` 10,000/- towards loss of estate, the overall compensation comes to ` 14,35,721/-.

19. The enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of payment. UPSRTC is directed to deposit the enhanced amount along with interest within six weeks.

20. The amount of compensation along with the interest shall be paid to the Claimants in the following manner:-

(1) ` 1,00,000/- along with the proportionate interest shall be paid to the father of the deceased Amit Kumar.

(2) ` 2,50,000/- along with the proportionate interest shall be paid to the mother of the deceased Amit Kumar.

(3) ` 2,50,000/- along with the proportionate interest shall be paid to Master Krish son of the deceased Amit Kumar.

(4) ` 2,50,000/- along with the proportionate interest shall be paid to Baby Prachi daughter of the deceased Amit Kumar.

(5) ` 5,85,721/- along with the proportionate interest shall be paid to Smt. Vishakha widow of the deceased Amit Kumar.

21. The amount awarded to Claimants Master Krish and Baby Prachi shall be held in FDR till they attain the age of 21 years or till their marriage, whichever is later. If any amount is needed for their higher education, their mother Smt. Vishakha shall be entitled to apply to the Tribunal for release of the amount for that purpose.

22. MAC APP. No.518/201 filed by UPSRTC is devoid of any merit; the same stands dismissed.

23. MAC APP. No.412/2011 filed by the Claimants is allowed in above terms.

(G.P. MITTAL) JUDGE JANUARY 03, 2012 vk