(1999) 09 DEL CK 0110

In the Delhi High Court

Case No : FAO No. 274 of 1987

Bulbul Chakrabartty and Others APPELLANT

Vs

Ram Kumar and Others RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Citation : (2001) ACJ 705 : (1999) 6 AD 604 : (1999) 82 DLT 330 : (1999) 51 DRJ 538 : (2000) 2 RCR(Civil) 152

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. O.P. Goyal Adv, for the Appellant; Mr. J.N. Aggarwal Advocate, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This appeal has been preferred by the appellants against the award dated 30.7.1987 passed by the Motor Accident Claims Tribunal on the claim petition filed by the appellants on account of the death of Sh. Prosod Chakrabartty as a result of a road accident that occurred on 29.8.1982. In the claim petition filed before the Motor Accident Claims Tribunal the appellants herein claimed an amount of Rs. 3,50,000/- as just and fair compensation on account of death of Sh Prosod Chakrabartty as a result of the aforesaid road accident.

2. The appellants, as petitioners, alleged that on 29.8.82 when the deceased was coming from his house at Shalimar Bagh and was going towards Irwin Hospital, he was hit by bus No. DHP - 3767 near the Old Secretariat Gate, Civil Lines, as a result of which the deceased sustained injuries and thereafter he died. It was stated in the said petition that the deceased was 36 years of age at the time of his death and was earning Rs. 17,000/- per annum as he was working as a Draftsman in M/s. Hastinapur Matels Pvt. Ltd., New Delhi. It was also alleged that the aforesaid bus was driven rashly and negligently by the driver, who was respondent No. 1 before the Tribunal . The aforesaid claim petition was contested by the respondents and on the pleadings of the parties six issues were framed in

the aforesaid proceedings. The Motor Accident Claims Tribunal on 30.7.87 passed an award for Rs. 1,49,000/- with costs and interest @ 12 % p.a. from the date of the petition till payment of the awarded amount in favor of petitioner Nos 1 and 2 and against the respondents directing respondent No. 2 to pay the aforesaid amount. Seeking enhancement of the amount awarded by the Tribunal, the present appeal has been preferred by the appellants herein, who were the claimants before the Tribunal.

3. Mr. Goel appearing for the appellants submitted that the findings arrived at by the Motor Accident Claims Tribunal to the effect that the dependency of Rs. 950/- to be reasonable is erroneous. He also submitted that the multiplier used in the present case as 13 was on the lower side when considered in the light of the decisions of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and also the decision in Spring Meadows Hospital & Another Vs. Harjol Ahluwalia through K.S. Ahluwalia & Another reported in 1998 (2) SCALE. In support of his contention that the Tribunal acted illegally and erred in law and facts in not taking into consideration the factor of future prospects and increase in the earnings of the deceased while making assessment of just and fair compensation he relied upon the decision of Sarla Dixit (supra).

4. Mr. Aggarwal appearing for the respondents, however, submitted that going by any standard the compensation awarded by the Tribunal was just and proper and that no error has been was committed by the Tribunal in arriving at the just and fair compensation.

5. I have also perused the records in the light of the aforesaid submissions of the learned counsel appearing for the parties. The records disclose that the deceased was 36 years of age at the time of his death and he was working as a Draftsman with M/s. Hastinapur Matels Pvt. Ltd. wherefrom he was getting an amount of Rs. 550/- per month and a retainership of Rs. 35/- per day. The appellants as claimants, examined PW-4 Sh. Pratap Singh, who was working in the finance department of the said firm M/s. Hastinapur Matels (P) Ltd. He had categorically stated that the deceased at the time of his death was working as a Draftsman on Contract basis and he was paid at that relevant time Rs. 550/- per month and a sum of Rs. 35/- per day. The said witness was working in the said firm as an Accounts Officer and he had also proved the statement of Accounts and the Vouchers as Exs. PW-4/1 to PW-4/7. A perusal of the aforesaid documents along with the deposition of the said witness would indicate that the deceased was earning Rs. 1,400/- per month and, Therefore, that could be accepted as the total earning of the deceased at the time of his death. Computing the income of the deceased as such, the Tribunal held that the dependency on the deceased at Rs. 950/- per month should be reasonable following the principles laid down by the Full Bench in Lachman Singh Vs. Gurmit Kaur reported in 1979 ACJ P&H.

Considering the said dependency at Rs. 950/- to be reasonable, the Tribunal used 13 as an appropriate multiplier and thereafter arrived at the amount of Rs. 1,48,200/- as just and fair compensation. Much reliance was sought to be placed by counsel appearing for the parties on the decisions of Trilok Chand''s case (supra) and Kerala State Road Transport Corpn.''s case (supra).

6. The decision in the Trilok Chand''s case (supra) was delivered by the three Judges of the Supreme Court in which the Supreme Court has laid down the formula for assessing suitable compensation and for arriving at the just and fair compensation in a case of death in the road accident. The deceased in the present case at the time of his death was earning Rs. 1400/- per month and left behind his widow, daughter and mother.

Accordingly, for following the said formula laid down by the Supreme Court in Trilok Chand''s case (supra), let me carry out the calculation in terms of the said formula. There are seven units in the family and, Therefore, when his income at Rs. 1400/- is divided into seven units, value of one unit would be Rs. 200/- and as the deceased is to be given credit of two units, therefore, Rs. 400/- is to be deducted from his total income to arrive at the total loss of dependency. Thus, total dependency at Rs. 1000/- could be considered to be reasonable and fair. Since he was a work- er, some provision for his transportation and out of pocket expenses has also to be worked out, which is worked out at Rs. 100/- per month and thereby the amount spent on the deceased works out at Rs. 500/- leaving a balance of Rs. 900/- per month for the family. The said amount thus could be taken as the monthly loss to the dependants of the deceased and the annual dependency thus comes to Rs. 10,800/-. The aforesaid annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss of dependency and in the present case the appropriate multiplier, in my considered opinion, would be 15. Thus applying the multiplier of 15 the amount calculates to Rs. 1,62,000/-. To the aforesaid amount a conventional amount by way of loss of expectations of life is to be added which is assessed at Rs. 15,000/- considering fall in the value of the rupee even in last four years. Thus the total amount comes to Rs. 1,77,000/-

7. Counsel for the appellants submitted that the promotional prospects and increase in earnings in future should also be considered by the court while assessing fair and just compensation and in support thereof he relied upon the decision of Sarla Dixit''s case (supra). In the said decision the Supreme Court took note of the factor of future promotions and increase in earnings for there was definite and conclusive evidence supporting the case of the claimants that prospect of promotion was guaranteed. No such definite and conclusive evidence has been led by the claimants to establish that there was scope for future increments and/ or increase in earnings or that there was any further prospect of promotion. The Accounts Officer of the said firm M/s. Hastinapur Matels (P) Ltd. was examined but no question was put to him as to what future prospects the deceased had in the organization or as to whether there was any scope for

increase in the earnings in the said organization. When there is no evidence in support of a claim, the claim cannot be accepted for lack of evidence and, Therefore, in my considered opinion the decision in the case of Sarla Dixit (supra) is not applicable to the facts and circumstances of the present case.

8. In the light of the aforesaid findings the appeal stands allowed to the extent indicated above. The compensation is determined at Rs. 1,77,000/- with consequential orders for payment of interest @ 12 % p.a. on the increased amount as well. The order of the Tribunal stands modified accordingly with costs.