

(2008) 11 DEL CK 0096
In the Delhi High Court
Case No : L.P.A. No. 384 of 2001

Chitra Goel and Others

APPELLANT

Vs

Abdul Sattar and Others

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Citation : (2009) ACJ 945

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : O.P. Goyal, for the Appellant; Jyotindra Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul and Mool Chand Garg, JJ.—K.K. Goel died in a road accident on 26.11.1984. The appellants are the legal heirs who have been agitating their claim for compensation for the last 24 years.

2. Late K.K. Goel was a passenger in a car being driven by one of his relations when the same was hit by a bus driven rashly, recklessly and negligently by respondent No. 1. D.T.C., respondent No. 3, is the owner of the bus while respondent No. 4 is the insurance company. The deceased at the time of his death left behind his parents, wife and three daughters. The father passed away during the pendency of the petition and the appellants before us are the wife and the three daughters who are now major. The deceased was aged 36 years at the time of his death.

3. The deceased was a government servant and working as" an Inspector with the Textile Committee on a salary of Rs. 3,200 per month in addition to other benefits. The Tribunal took the dependency amount at Rs. 2,200 per month and applied the multiplier of 22 to award a compensation of Rs. 5,80,800 apart from interest at 12 per cent per annum from the date of petition till realization of the amount.

4. The appellants, aggrieved by the said award, preferred an appeal. The appellate court granted some further relief to the appellants in terms of the impugned judgment dated 31.5.2001.

5. The basis of the calculation as per the impugned judgment is that the appellants had placed on record material to show the further prospects of the deceased as per the pay commission recommendations in terms of the duly certified documents produced by the appellants along with the application for additional evidence. It was established that the deceased was entitled to a sum of Rs. 11,300 as on 1.1.1996. The learned single Judge took note of the authoritative pronouncement of the Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , whereby the earnings of the deceased at the time of his death and what he would have earned on the date of his superannuation were added together and divided by two to come to an average earning over the period of time. Thereafter, 1/3rd of the amount is reduced for his expenses. It is in view of this principle that the learned single Judge of this Court concluded that the average income of the deceased was Rs. 7,000 and after deducting 1/3rd of the amount the same came to Rs. 4,500. The amount, thus, was Rs. 54,000 per annum and the multiplier applied is 15. Learned single Judge noticed that the multiplier amount cannot exceed 18 in view of the judgment of the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,

6. There are two aspects urged before us. The first is in respect of the multiplier. Learned Counsel for the appellants does not dispute that the highest multiplier which could have been applied is 18. A multiplier of 15 has been applied. The deceased was 36 years old at the time of his death. We cannot say that the said multiplier is not reasonable and thus, find no merit in this plea.

7. The second aspect urged before us is the loss of dependency. Learned Counsel submits that learned single Judge while taking into consideration the additional documents filed along with the application for additional evidence ignored the public document filed by the appellants which showed the increase in pay and allowances from 1.1.1995 till 30.9.2008, the date of the superannuation of the deceased if he had not passed away. It is thus submitted that the said amount is liable to be taken into consideration while applying the principle as set out in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, .

8. In Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the Apex Court doubled the income as was being drawn at the time of death on account of lack of evidence but simultaneously laid down the principle of adding the income at the stage of death to the amount which the deceased would have earned at the stage of retirement and an average to be taken of the same. Learned Counsel for the appellants pleads that the amount should be taken along with the additional benefits admissible. We are not inclined to accept the plea as there are various deductions permissible and taking all these factors into consideration we are only inclined to take the basic pay into consideration which is Rs. 15,200. If

the income of Rs. 3,200 as on the date of death and the amount of basic pay found on the date of the retirement (if the deceased would have passed away) is added the total amount comes to Rs. 18,400. The average of the same would come to Rs. 9,200 per month being half of that amount. On deducting 1/3rd of the amount, the balance amount would come to Rs. 6,200 per month (approximately). The aforesaid being the monthly amount, the annual emoluments would come to Rs. 74,400 to be multiplied by 15. The multiplier is upheld by us. Total amount would thus come to Rs. 11,16,000.

9. The aforesaid amount would obviously earn the same rate of interest at 12 per cent per annum from the date of the filing of the petition. In the meantime amounts which have been paid would be liable to be deducted along with the proportionate interest for the purpose of calculation of the balance amount.

The appeal is allowed to the aforesaid extent and the impugned order of the Tribunal and the learned single Judge stand modified. The parties are left to bear their own costs.