
(1987) 08 DEL CK 0010

In the Delhi High Court

Case No : First Appeal No. 60 of 1976

Delhi Transport Corporation

APPELLANT

Vs

Beant Kaw

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Citation : (1988) ACJ 463 : (1987) RLR 537

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : J.C. Batra and O.P. Goyal, for the Appellant;

Judgement

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Y.K. Sabharwal, J.

(1) The appellant has come up in appeal u/s 110-D of the Motor Vehicle Act, 1939 (the "Act"), against the award of the Motor Accidents Claims Tribunal, Delhi, asking for the dismissal of the application for grant of compensation. The respondent has also filed cross objections (CM 1304/84) praying for enhancement of compensation.

(2) On 20.3.70 at about 8.30 Am Swaran Singh (deceased) was crossing Najafgarh Road and when he reached near stationery Bus No. DLP-1239, another Bus No. DLP-614 overtook this stationery Bus No. DLP-1239. Bus No. 614 was being driven by Gudan Ram. According to the respondents because of rash and negligent driving of Gudan Ram the bus driven by him struck into Bus No. DLP-1239 and in the process Swaran Singh was sand witched between the two buses. Swaran Singh died on the spot. Both the buses are owned by the appellant.

(3) The widow, four children and the mother of the deceased filed an application u/s 110-A of the Act for award of a sum of Rs. 1 lakh as compensation. After due appreciation of the evidence the Tribunal held that Shri Swaran Singh sustained

fatal injuries due to rash and negligent driving of Gugan Ram of Bus No. DLP-614 and that the accident was not caused due to the negligence of the deceased. The Tribunal awarded a sum of Rs. 16,340.00 as compensation to the respondents.

(4) The learned Tribunal relied upon the evidence of Kashmira Singh (PW-5). The Tribunal, however, did not rely upon the evidence of other witnesses of the claimants. There is no substance in the contention of the learned counsel for the appellant that evidence of Kashmira Singh is not trustworthy. It was pointed out by the learned counsel that Kashmira Singh stated that he had already crossed the road when the accident took place and further stated that when he started crossing the road the deceased was at a distance of 30-40 yards behind him. There is no substance in the contention that Kashmira Singh could not have witnessed the accident as he had already crossed the road or because deceased was at a distance of 30-40 yards behind him. The F.I.R. of the case was recorded on the statement made by Kashmira Singh to the police. Kashmira Singh gave full details of the accident in the F.I.R. His evidence is consistent with the account of the accident given by him soon after the accident. There are no contradictions in the evidence of Kashmira Singh let alone material contradictions. He was the eye witness and soon after the accident police recorded his statement. The Tribunal has rightly placed reliance on the testimony of Kashmira Singh.

(5) As against the evidence of Kashmira Singh the appellant produced two witnesses. One of them is Sh. Gugan Ram (RW-1) who was driving the bus. The other witness is one Shri Mahabir Parsad (RW-2). No reliance can be placed on the evidence of the driver Gugan Ram. Shri Gugan Ram stated in his cross examination that he did not know as to how the accident took place. The Tribunal rightly did not rely upon the testimony of Gugan Ram. The evidence of Mahabir Parsad was also rightly rejected by the Tribunal. Mahabir Prasad did not give any Explanation as to why his statement was not recorded by the police. He admitted in his evidence that the deceased had fallen down after the impact and struck against the right rear portion of the stationery bus. Although it was stated by RW-2 Mahabir Parsad that he had noted in the complaint book his name and address but even the said complaint book was not produced. It is clear from the evidence adduced on the record that Shri Swaran Singh sustained fatal injuries due to rash and negligent driving of Bus No.DLP-614.

(6) Learned counsel for the appellant contended that the claim petition was not maintainable for want of notice u/s 478 of the Delhi Municipal Corporation Act. Before the Tribunal learned counsel for the appellant had not pressed the point of notice which was covered by Issue No. 1. I, however, permitted the learned counsel to address arguments on the said question as it is a pure question of law. In support of the contention that notice u/s 478 of the Dmc Act is mandatory, the learned counsel relied upon Smt. Shila Wanti and Others Vs. R.B. Kishore Chand and Sons and Others, . The said judgment has no relevance. The P & H High Court has only held that the proceedings before the Claims Tribunal are in the nature of a suit and the Claims Tribunal for all intents and purposes

discharges the same functions and duties in the same manner as a court of law is expected to do. The P & H High Court was not concerned with the question of requirement of notice. A notice u/s 478 would be necessary only when an action is questioned under the Act. The accident does not relate to any of the statutory functions of the appellant under the Act and, Therefore, in my opinion, a claim petition cannot be dismissed for want of notice u/s 478 of the Dmc Act. It is not necessary to serve such a notice before filing a petition u/s 110-A of the Act (See : Fao 53/67 decided on 25.3.75 Re: Mcd vs. Ganpat Ram-1975 RL.R. 61.

(7) Turning now to the cross objections it was not seriously disputed that the learned Tribunal rightly came to the conclusion that the age of the deceased at the time of the death was 38 years. It was faintly suggested that the deceased was of the age of 32 years at the time of death. The Tribunal after rightly marshalling the evidence came to the conclusion that the age of the deceased at the time of death was 38 years and nothing tangible was brought to my notice to reverse the said finding.

(8) The Tribunal held that the deceased was earning about Rs. 200.00 p.m. at the time of the accident. There is no substance in the contention that the Tribunal ought to have taken the earning of the deceased at Rs. 400.00 p.m. Karam Singh (PW-4), father-in-law of the deceased stated that the deceased used to earn Rs. 250.00 to Rs. 300.00 p.m. It is not unusual for the parties to exaggerate the amount. The said finding of the Tribunal is also not liable to be modified.

(9) The Tribunal after coming to the conclusion that the deceased was earning Rs. 200.00 p.m. further came to the conclusion that the deceased was contributing a sum of Rs. 100.00 per month for the family. It may be noted that apart from the mother, the deceased had his wife and four minor children. In the facts and circumstances of the case and also in view of the size of the family it would not be reasonable to conclude that the deceased was spending 50% of his earning on himself and only contributing 50% for the family of such a large size. It would be reasonable to conclude that the deceased was contributing a sum of Rs. 150.00 per month to support his family.

(10) The Tribunal has applied the multiplier of 17 years on the ground that Swam Singh was doing a hard job of a blacksmith. The age of the deceased at the time of death has been fixed as 38 years. The span of life should have been taken to be 60 years in view of the high rise in life expectancy .Even if the deceased was doing the job of a blacksmith it is reasonable to infer that he would have supported the family till the age of 60 years. The reasonable multiplier would, Therefore, be of 22 years. On this basis the total compensation works out to be $22 \times \text{Rs. } 1800 = \text{Rs. } 39,600$. As the compensation is being paid in lumpsum and uncertainties of life are relevant factor I reduce the compensation by Rs. 7920.00. The net amount is thus fixed at Rs.31,680.00. Forsake of convenience I will round it off at Rs. 32,000.00. Accordingly, I enhance the compensation from Rs. 16,340.00 to Rs. 32,000.00

(11) The respondents-claimants have strenuously urged that interest on the amount of compensation should also be awarded. The grant of interest, u/s 110 (cc) of the Act is a matter of discretion as also the rate and the date from which interest is to be awarded. The date from which interest may be awarded shall not be earlier than the date of making the claim. Various judgments were cited by the learned counsel in support of the contention that interest at the rate of 12% p. a should be allowed from the date of the claim. Every case, however, depends on facts and circumstances of each case for exercise of discretion u/s 110(cc) of the Act to grant the interest. In the facts and circumstances of the case I direct that in case the amount of Rs. 32,000.00 is not paid within two months the respondents shall become entitled to recover the amount with interest at 12% p.a calculated from the date of the claim (See : 1987 A.C.J. 172 (SC) Jyotsna Dev vs. State.