
(1989) 10 DEL CK 0007

In the Delhi High Court

Case No : First Appeal No. 134 of 1980

Elizabeth Mathew and Others

APPELLANT

Vs

Vasdev and Delhi Transport Corporation

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Citation : (1989) ILR Delhi 523

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Yogesh Malhotra, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This appeal is filed against an award granted by the Tribunal on 1st December, 1979 for a sum of Rs. 65,510.00 with costs of the proceedings. The appellant Nos. 1 and 2 are the widow and daughter while appellant Nos. 3 and 4 are the father and mother respectively of the deceased Thomas Mathew. By this appeal the appellants pray for the enhancement of the compensation of Rs. 20,00,000.00 (Rupees twenty lakhs).

(2) The deceased Thomas Mathew was going on his Scooter No. DHW-2222 on 22nd February, 1974 from Ring Road towards S.N. Depot side on M-Avenue Road on the correct side of the road at about 10.30 A.M. A D.T.C. bus bearing No. DLP-1072 driven rashly and negligently by respondent No. 1 came from the opposite direction, i.e., from S.N Depot side, at a very fast speed and dashed against the scooter of the deceased by coming to the right side of the road. He fell down from the scooter, received injuries and died on the spot,

(3) I have heard Shri Yogesh Malhotra, counsel for the appellant. None has appeared for the respondents.

(4) The first argument advanced by the learned counsel for the appellants is that the annual dependency of the appellants on the deceased has not been correctly

calculated by the Tribunal. For that purpose he drew my attention to the judgment of the Tribunal itself. In para No.16 of the judgment on page 7 the Tribunal has held on the basis of the statement of RW-1 Mohd. Hussain Section Officer, Office of the Controller General of defense Accounts, New Delhi, were the accused was employed as Deputy Controller General and getting a gross sale of Rs. 1,326.50 per month. It was considered to be an authentic proof of the income of the deceased. However, while calculating the monthly dependency of the family of the deceased the learned Tribunal seems to have fallen into an error. The appellant No. 1 as Public Witness -3 stated that the deceased was contributing Rs. 900.00 per month to meet the household expenses. The Tribunal gave allowance roughly of 1/3rd of the income towards his personal expenses and the rest was deemed to be contributed to the family but while calculating the dependency the Tribunal took the income of deceased at Rs. 900.00 per month which was actually deposed to be contribution of the deceased towards the family. The gross income of the deceased as deposed by RW-1 was Rs. 1,326.50 and, Therefore, taking all the personal expenses of the deceased into consideration the monthly dependency should not have been less than Rs. 800.00 per month. Therefore, the annual dependency would come to Rs. 9,600.00 (Rupees nine thousand six hundred) and not Rs. 7,200.00 (Rupees seven thousand two hundred) as held by the Tribunal.

(5) Learned counsel for the appellants also made a grievance that the Tribunal did not take into consideration the further promotions which would have been earned by the deceased during the normal course of his employment or even the normal increment to be earned by the deceased through out his career .However, no evidence in this respect has been pointed out from the record which could have shown as to what further promotions or what normal increments could have been ended by the deceased.

(6) Learned counsel for the appellants then drew my attention to the tact that in this case only a multiplier of 20 was adopted by the Tribunal In fact, the age of the deceased was only about 30 years at the time of the accident According to the learned counsel normal expectancy of life was also found by the Tribunal between 65 to 70 years of age. Therefore, the multiplier of atleast 35 should have been adopted. However, I am of the opinion that the deceased was in Government service and, Therefore, he would have retired from the government service at the age of 58 years. Therefore, not more than a multiplier of 28 could have been adopted in this case because the deceased met with this unfortunate fatal accident at the age of 30.

(7) Multiplying the annual dependency of Rs. 9,600.00 by 28 the amount of compensation payable to the appellants would Therefore come to Rs 2,68,800.00 (Rupees two lakhs sixty eight thousand eight hundred only).

(8) Learned counsel then made a grievance that the Tribunal made deductions from the compensation payable to the appellants wrongly. I have gone into this aspect carefully. The judgment shows that the Tribunal took into consideration

and made the deductions on the following counts :- 1. Appellant No. 1 would get pension at Rs. 235.00 per month till her re-marriage or death whichever is earlier. 2. Appellant No. 2 being the daughter would get pension at the rate of Rs. 25.00 per month till she attained the age of 21 years. 3, Appellant -No. 1 received Rs. 60,000.00 from the Life Insurance Corporation of India. 125 4. Appellant No. 1 received Rs. 14,100.00 on account of gratuity. 5. Appellant No. 1 received Rs. 2,038.00 on account of G.P.F. contribution. 6. 10% deduction on account of acceleration of receipt of pecuniary gain on account of uncertainties of life and lumpsum payment.

(9) In *Sabo Devi & Ors. v. Pritam Singh & Ors.* (1985) Acc 393 this court did not favor deductions on account of the widow being childless and that she was likely to get re-married. In this case Appellant No. 1 (a widow) has a daughter who was also one year old only at the time of the death of the deceased father and now she must be also about 16 years old. Therefore, in such circumstances, the prospects of re-marriage of the appellant No. 1 are absolutely remote.

(10) The deduction on account of the fact that the daughter would get the pension is also not justified.

(11) So far as the deduction on account of receipt of the amount from the Life Insurance Corporation of India is concerned, I am of the view that deduction on this account is also not permissible. That amount, in any case, would have been received by the deceased if he were alive at the time of maturity of the Policy and for all those years he would also have been continuing to make contribution towards the upkeep of the appellants. Therefore, the receipt of any such insurance amount by one of the appellants should not deprive the appellants of the pecuniary benefits from the respondents which they would have recovered in any case from the respondents. I am of the view that the approach of the Tribunals in awarding compensation in fatal accidents should be a little on the liberal side specially in cases where the deceased was the sole bread winner of the family and the family members all of a sudden stand deprived not only of the pecuniary benefits, but also of the mentally comforting affections and other pleasantries normally derived by them. However, attempt should also be made not to fall into the trap of exorbitant claims as the one in this case. But this circumstance also should not prejudice the judicial discretion which should be exercised along well-defined channels in the light of various judicial pronouncements.

(12) It was laid down by this court in *Delhi Transport Corporation v. Veena Rani Sethi & Ors.* (1989) A Cc 367 that the Tribunal had erred in deducting Rs. 27,600.00 which was paid as family pension, Rs. 2,470.00 on account of gratuity and insurance and 15% on account of lumpsum payment. All these deductions were negated by this court and it was held that deductions on account of the above heads were impermissible. Even 15% deduction on account of lumpsum payment were held to be wrongly allowed by the Tribunal in *Sugar Chand Phool Chand Jain v. Santosh Gupta & ors.* (1986) Acc 263.

(13) So far as deduction on account of receipt of G.P.F.contribution of the deceased is concerned, it is true that the amount of such deduction would have reduced the gross salary of the deceased and would have also reduced the amount of monthly dependency of the appellants. The amount received on such account is only Rs 2,038.00 . The deceased had been in service for about 6 years before the date of his .death. Thus the only contribution on account of the provident fund would not have been more than Rs. 30.00 or Rs.- 40.00 per month. Therefore, even though that amount is deducted from the gross salary of the deceased/receipts of monthly dependency, it will not make much difference in the amount contributed by the deceased towards the family expenses. Therefore, no deduction on any such count will also be permissible in the facts and circumstances of the case.

(14) Therefore, I am of the view that all the deductions made under various heads by the Tribunal in this case were not permissible and the appellant* were entitled to the receipt of compensation of Ra. 2,68,800.00 (Rupees two lakhs sixty eight thousand eight hundred only) from the respondents. The respondents were directed to deposit a sum of Rs. 65.510.00 as the amount of the compensation.

(15) The last submission made by the learned counsel for the appellants is that the Tribunal should also have allowed interest on the awarded amount from the date of the petition till payment. I have pursued the record of the trial court. I find that the delay in the decision of this case occurred mainly on account of the appellants. This issues were framed on 25-11-75 and the appellants took about 4 years to complete the evidence of four witnesses only. The order dated 52-79 on the file of the Tribunal also shows that on that date none appeared for the appellants and so the claim had to be dismissed in default for non-prosecution. It was only subsequently that counsel for the appellants appeared and requested for restoration and adjournment for evidence. The Tribunal, Therefore, showed indulgence and fixed the case of the appellants for remaining evidence. On none of the remaining dates for evidence, the appellants were able to examine their evidence and ultimately evidence of the appellants had to be closed by the order of the Tribunal dated 16-7-79. The respondent completed their evidence in one date only i.e. 17-10-79. Therefore, taking all the circumstances into consideration since the respondents cannot be held guilty for the delay of the proceedings, I am of the view that no interest should be awarded in this case.

(16) In conclusion, I, Therefore, partly accept to appeal and direct enhancement of the amount of compensation awarded to Rs. 2,68,800.00 against the respondents and in favor of the appellants.