
(1993) 09 DEL CK 0065

In the Delhi High Court

Case No : F.A.O. No's. 295 and 300 of 1980

Halima Khatoon and Others

APPELLANT

Vs

N.D.M.C. and Others

RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1994) ACJ 95 : (1994) 108 PLR 67

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Judgement

P.K. Bahri, J.—These two appeals are directed against the award of the Motor Accidents Claims Tribunal dated 29.4.1980, by which a sum of Rs. 78,995/- has been awarded to Halim Khatoon and her nine children, legal heirs of deceased Shabbir Ahmed Khan.

2. The appeal has been filed by the legal heirs of Shabbir Ahmed Khan seeking enhancement of the amount so awarded, whereas N.D.M.C. has filed the other appeal for setting aside the award taking the plea that there is no satisfactory evidence to prove that Duji Ram, driver employed with the N.D.M.C., was guilty of any rash and negligent act, resulting in the accident which proved fatal for Shabbir Ahmed Khan who was at the relevant time driving a two wheeler scooter.

3. The first question to be decided in these appeals is whether the accident which resulted in death of Shabbir Ahmed Khan had occurred due to rash and negligent driving of Duji Ram driver of the truck belonging to N.D.M.C. The facts that there took place an accident at the date and time and the place mentioned in the claim petition and Duji Ram was driving the truck as part of his duties with N.D.M.C. are not in dispute.

4. It appears that on 9.10.1975, at about 12 noon, the deceased was driving a two wheeler scooter and was proceeding on Ring Road towards Bhairon Temple and had reached near the crossing of the Ring Road and Bhairon Road when a

truck, vehicle No.DLG-6277, belonging to the N.D.M.C. and driven by N.D.M.C.'s driver Duji Ram came at a high speed and struck the scooter from the back, the truck could stop only at a distance of 15 to 20 ft. from the place of the accident and Shabbir Ahmed Khan had received fatal injuries and succumbed to the same at the spot.

5. To prove that the accident took place in the aforesaid manner, the claimants examined two witnesses, namely, PW 5, Sanwat Ram and PW 6, Jai Prakash, who narrated the facts as mentioned above. Both these witnesses are natural witnesses. One was having a tea shop near the place of accident and the other was working as a barber sitting near the said spot. Duji Ram, the driver of the truck, appeared as RW 2 and did not dispute the fact of the tea shop being there near the place of occurrence. If that is so, there was no reason to disbelieve the testimony of these two eye-witnesses as to the manner in which the accident took place. The testimony of Duji Ram that the scooter was coming at a high speed and had proceeded to overtake the truck from the wrong side and the same had resulted in the accident was disbelieved by the Tribunal, and for good reason, because the testimony of the driver of the vehicle was not supported by any independent witness.

6. The learned Tribunal has relied upon a judgment of the Orissa High Court given in the case of Jagabandhu Naik and Another Vs. Managing Director, Orissa State Road Transport Corporation, , where the accident had resulted in almost similar manner with the vehicle striking a cyclist from the back. It is quite clear that the driver of a heavy vehicle like truck has to be little bit extra cautious while driving on a busy road in Delhi.

7. In the present case, the truck had struck the scooter from the back and had not stopped for 15 to 20 ft. making itself-evident that the truck was being driven by the driver, Duji Ram, in a rash and negligent manner and the same resulted in the said accident causing fatal injuries to the scooterist. Hence, I endorse the finding of the Tribunal in this regard.

8. It is not disputed before me that the deceased was employed with Municipal Corporation and was drawing the salary of Rs.922.95, he was having a wife and nine children and he was supporting them as he was the only earning member of the family. After deducting Rs.222.95 as an amount the deceased must have been spending for his personal needs, the Tribunal found that Rs.700/- were being spent per month by the deceased for the maintenance and up keeping of his family members. This finding of the Tribunal is not being challenged before me.

9. However, the counsel for the claimants has vehemently argued that the Tribunal was wrong in applying the multiplier of 15 when admittedly the age of retirement of the deceased was 58 years and at the time of his death he was aged 40 years, so the multiplier of 18 ought to have been applied. There is much force in the contention of the learned counsel for the claimants in this aspect.

The multiplier of 18 was to be applied in this case.

10. The claims Tribunal was not right in allowing any deduction on account of pension while awarding lump sum payment. This point is now not rest Integra and stands settled by a number of judgments which had been noticed in a recent judgment given by this court in the case of Dharam Singh and Another Vs. Parveen Sehgal and Others, .

11. The Supreme Court also in the latest judgment in the case of Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, , made it clear that the court should award compensation by multiplying the life expectancy without making any deductions. It was also held by the Supreme Court that the determination of the quantum must be liberal, not niggardly, since the law values life and limb in free country in generous scales.

12. The counsel for the N.D.M.C. had cited New India Assurance Co. Ltd. Vs. Chinta Devi and Others, , wherein it was held that the quantum of pension being earned by the claimants should be taunted above, particularly of this court, no deduction regarding the pension being earned by the claimant can be allowed from the lump sum compensation which is being awarded by the Tribunal.

13. In view of the aforesaid findings, I hold that applying the multiplier, of 18, the compensation awarded ought to have been Rs.1,51,200/-, I allow the appeal and modify the award to that extent and grant interest at the rate of 12 per cent per annum on the enhanced amount from the date of the filing of the claim petition till payment. I have awarded interest at the rate of 12 per cent in view of the judgment of the Supreme Court in the case of Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, .

14. The appeal filed by the N.D.M.C. (F.A.O. No.300 of 1980) is dismissed while the appeal filed by the claimants (F.A.O. No. 295 of 1980) is allowed in above terms.

15. Parties are left to bear their own costs in these appeals.