

(1989) 07 DEL CK 0007

In the Delhi High Court

Hukam Chand and Others

APPELLANT

Vs

Shahzadi Begum and Others

RESPONDENT

Date of Decision : 24-07-1989

Acts Referred:

Citation : (1989) 2 ACC 376

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Judgement

Malik Sharief-Ud-Din, J.—The appellants are aggrieved of an award dated 11th of December 1979 passed by the Motor Accident claims Tribunal Delhi, by which the respondents were granted a sum of Rs. 6000/-with costs and interest at the rate of 6% per annum from the date of the filing of the petition till the final realisation.

2. This award was passed pursuant to a claim made u/s 110 of the Motor Vehicles Act by which compensation to the tune of Rs. 30,000/- was claimed by the respondents on account of the death of one Shahnaz Begum alias Rani aged about 8 years The respondents are the mother and father respectively of the deceased who died in an accident on 22nd of December 1971 at about 12 45 P.M. when the deceased was being carried on the carrier of the cycle by her father respondent No. 2 while the father was walking on foot. The accident was caused by vehicle bearing No. DLL 2774 belonging to M.C D., which was being driven by Shri Hukam Chand at the time of the incident. The allegation was that the accident was caused due to rash and negligent driving by the driver and M.C.D. as owner of the vehicle was vicariously liable for the tortuous act of its driver Hukam Chand.

3. At trial, the matter was contested by Hukam Chand and the case was preceded ex-parte against M.C.D., though M.C.D. actually participated in the proceedings without being allowed to file written statement. At trial, it was disputed that the respondents were the legal representatives of the deceased. It was also disputed that the appellant Hukam Chand was driving the vehicle rashly and negligently.

4. On an assessment of evidence the trial court came to the conclusion that the respondents herein are the legal representatives of the deceased. On the basis of the assessment of evidence, I find nothing wrong about the finding that the respondents herein are the legal representatives of the deceased Shahnaz Begum alias Rani.

5. Mr. Saini, however, contests that there is any evidence in support of rash and negligent driving by the appellant Hukam Chand. I find myself in complete disagreement with Mr. Saini. There is no dispute about the fact that the deceased died as a result of the accident caused by the offending vehicle, which at the relevant time was being driven by Hukam Chand appellant. The stand of Hukam Chand is that he came to know about it only when there was an alarm and it was caused due to the negligence of the deceased. There are two eye witnesses who have been examined in support of the fact that the appellant Hukam Chand was driving the vehicle rashly and negligently as a result of which he hit the bicycle resulting in the fall of the deceased and thereafter he crushed the body of the deceased and only stopped at a distance of about more than 15 yards after an alarm was raised by the people. One of these witnesses PW 7 Nirazuddin is a shopkeeper having his shop near the place of the accident. It seems that one of the witnesses had stated that the girl was being carried on the rod of the bicycle and, Therefore, the learned Presiding Officer of the Tribunal felt that there is not much to be believed in the version of the eye witnesses as this discrepancy whether the girl was being carried on the rod or the carrier of the bicycle in his opinion was material. I do not agree with this observation of the Tribunal. The fact of the matter is that the girl was being carried on the bicycle when she met with the accident due to rash and negligent driving of the appellant Hukam Chand to which fact both these witnesses have also testified. Whether she was sitting on the rod or the carrier in such a situation is not material.

6. Now apart from this, I may refer to the testimony of PW 9 Ram Lal, S.I., who has clearly stated that when he inspected the vehicle involved in this accident he found the blood on the right front tyre and in between the two rear right tyres. There is no dispute about the fact that the driver and the offending vehicle was taken care of on the site of the incident. This clearly shows that the girl was crushed first under the front right wheel and then the vehicle passed over the body and then only stopped at some distance from the scene of the incident. Is any more evidence required to prove that the truck driver was rash and negligent? The very fact that she is crushed under the front wheel goes to show that the vehicle was not in proper control and the driver was obvious of the pedestrians walking on the road. That the truck could only be stopped at a distance further supports the conclusion that it was not being driven a proper speed. I am not concerned with the fact that no witness has made mention of the actual speed but I may indicate that what constitutes rash and negligent driving will depend upon various factors This incident has taken place near Jama Masjid, opposite shop No. 111. There need not be evidence in support of the fact that it is a very congested locality and the drivers have to be very careful in

passing over the roads in that area. The court can take judicial notice of the fact that the area is very much congested. In such a place if after causing the accident the vehicle could only stop at a long distance it only shows how rash and negligent the driver of the offending vehicle has been. I Therefore fully agree with the assessment of the evidence by the Tribunal in support of this fact.

7. The Tribunal has observed that no evidence has been led in support of the fact as to how much pecuniary loss has been caused to the respondents due to the death of their daughter. It has, however, believed respondent No. 1 that the deceased used to help her in the household work and after fixing the rate of her services at Rs. 50/- per month it has been multiplied by 12 and 10 years as the Tribunal felt that after 10 years she had to be married and sent away from her parents home. It was in this manner that a sum of Rs. 6000/- was assessed as compensation for the death of the deceased.

8. I may, Therefore, at this stage take into consideration the cross-objections filed by the respondents. They have made a grievance to the effect that the Tribunal has wrongly assessed the compensation and that they may be awarded compensation to the tune of Rs. 30,000/-. The Tribunal, in my view, while fixing the rate of monthly services of the deceased as Rs. 50/- has failed to take into consideration the fact that the accident took place in the year 1971 and the award was passed in the year 1979 and the value of Rs. 50/- in 1979 would be further reduced and it can hardly be Rs. 25/-. In this way, in my view, the Tribunal had fallen in error and if the value of the services in 1971 was assessed at Rs. 50/- it should have been paid at the rate of Rs. 100/- per month in the year 1979 when the award was finally made. In the second place the Tribunal, in my view, has further fallen into error in not taking into consideration the agony and shock which the parents of the girl have undergone on the death of their dear daughter. It has also not taken into consideration the amount they might have been required to spend on the last rites and other religious ceremonies of the deceased. These factors if taken into consideration would entitle the respondents to an enhanced compensation. I would, Therefore, dismiss this appeal, allow the cross-objections and direct that a total amount of Rs. 15,000/- shall be paid to the respondents by way of compensation. That in my view alone would meet the ends of justice as, in my view, the amount of award made is ridiculously low.

9. I am told that the amount of Rs. 6000/- and the interest was deposited in the court and that it has been withdrawn by the respondents on executing a bond. The enhanced amount of Rs. 9,000/- shall be deposited with the Registrar of this Court with interest at the rate of 12% per annum from the date of claim till the date of its realisation. The interest shall only be chargeable on the enhanced amount of Rs. 9,000/-. The amount shall be deposited within two months from today failing which it shall be realised in due course of law. If and when the amount is deposited the Registrar shall disburse it to the respondents. The respondents are also allowed costs of this appeal, which I assess at Rs. 500/-.

The cross-objections are allowed and the bond submitted by the respondents shall stand discharged.