(1995) 08 DEL CK 0070

In the Delhi High Court

Case No : First Appeal No. 107 of 1982

Kanta Kumari and Others APPELLANT

Vs

Lakhi Ram and Others RESPONDENT

Date of Decision : 29-08-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 166

Citation : (1995) 59 DLT 758

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : O.P. Goyal and A. Ahlawat, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present appeal is directed against the award dated September 30, 1981, passed by Shri H.P.Bagchi, Judge, Motor Accidents Claims Tribunal, Delhi.

(2) The appellants-claimants filed petition u/s 110-A of the Motor Vehicles Act, 1939 arising out of the accident that occurred on December 26,1978 at about 6 p.m. on road going from Hindu Rao Hospital towards Chauburja under the jurisdiction of P.S. Civil Lines, Delhi. The deceased Charan Dass was driving motor cycle No. Dlm 7090 along with Manjit Singh Sethi who was sitting on the pillion seat. They were going from Hindu Rao Hospital towards Mall Road and when they were on the left side towards North i.e. Chauburja and had gone about 100 yds from the out-gate of the hospital, truck No. DHG-1121 driven by respondent No. I in due course of his employment with respondents 2 and 3, came from the opposite direction and hit the motor cycle with great force after coming on the wrong side. It was further alleged that the front bumper of the truck hit the motor cycle and the front right head light of the truck was not thereon at the time of accident; the accident was caused due to negligent of respondent No. 1. The deceased was removed to Hindu Rao Hospital immediately where he was declared dead. The deceased was working as Dresser in the said

hospital and was getting about Rs. 500.00 per month which he was making available to the appellants. It was also stated that he was earning a further sum of Rs. 200.00 by doing sundry medical jobs for various persons. The appellants, as a consequence, suffered an irreparable loss and extreme mental pain and agony due to sudden and untimely demise of Charan Dass who was the bread earner of the family. The claim for compensation in the sum of Rs. 2 lakhs with costs and interest was filed before the Tribunal.

(3) The respondents denied the allegations made by the appellants in the written statement though the factum of accident was admitted. It was also admitted that the offending vehicle was driven by respondent No. I at the relevant time and it was owned by respondents 2 and 3.

(4) The following issues were framed on the pleadings of the parties :

1. Whether Shri Charan Dass died as a result of rash and negligent driving of truck No. DHG-1121 on the part of respondent No.1 as alleged? 2. Whether the petitioners are the legal representatives of the deceased? 3. To what amount of compensation, if any, are the petitioners entitled and from whom? 4. Relief.

(5) The learned Judge disposed of issue No.1 by returning a categorical finding that the offending truck went on the wrong side of the road and the accident which resulted in the death of Charan Dass and caused bodily injury to Manjit Singh Sethi, was wholly caused due to rash and negligent driving on the part of respondent No.1. The present appeal has been filed by the appellants-claimants for enhancement of compensation and no challenge is made to the above finding of the Tribunal by the respondents. I have perused the evidence on record and heard learned Counsel for the parties. There is no infirmity in the finding of the Tribunal that the accident was caused due to rash and negligent driving of truck No. DHG-1121 on the part of respondent No.1. The same is affirmed.

(6) The Tribunal further held that the appellants who are the widow and children were the legal representatives of the deceased though the father Madan Lal was not held entitled to claim compensation, in view of the fact that the father is not shown as heir of the deceased under the Hindu Succession Act. This finding is also not impugned in this appeal. The same is, accordingly, affirmed.

(7) The Tribunal then assessed the quantum of compensation on the basis of the age of the deceased as well as the income which he was having while working as a Dresser in Bara Hindu Rao Hospital. The deceased was held to be 43 years of age and his total emoluments were stated to be Rs. 420-470.00 . The dependency in this background was fixed at Rs. 250.00 per month and by using a multiplier of 12 years, the compensation was assessed at Rs. 36,000.00 . The sum of Rs. 15,000.00 , which was expected to be received by the widow though not proved towards pension and Provident Fund etc., was deducted and the ultimate award was made in the sum of Rs.21,000.00 .

(8) The learned Counsel for the appellants has contended that the Tribunal has

used the dependency at a very low figure in view of the fact that the deceased was contributing more for the family as he was also earning some extra income by doing private work as a Dresser. There is no record of the alleged extra income. The law . is well settled now that the future prospects of advancement in life and career can be taken into consideration to assess the dependency as well as the multiplier. This is so held in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . The deceased in the present case was earning a little less than Rs. 500.00 per month but it is strongly argued that there was some extra income of Rs. 200.00 for additional work which he was doing in his spare time. Be that as it may, the salary structure has undergone changes during the past couple of years in view of the reports of the Pay Commissions as well as on the basis of award of Dearness Allowances to various categories of employees working in Government Institutions. In this view it can safely be said that the average income of the deceased, if he had continued to live, would not be less than Rs. 1,000.00 per month though Mr. Goyal has contended that the present salary of similarly situated employees is around Rs. 2500.00 per month. The dependency, Therefore, can be assessed at Rs. 10,000.00 per annum in the facts and circumstances of the present case. The deceased was a Government employee and would automatically have retired at the age of superannuation which is presently fixed at 58 years. The multiplier can be fixed at 15 which will meet the requirements of law, as laid down by the Supreme Court in General Manager, Kerala Road Transport Corporation (supra). The total award in this background is, accordingly, assessed at Rs. l,50,000.00 which shall be payable in the proportion to the appellants as awarded by the Tribunal. The appellants shall also be entitled to interest at the rate of 15 per cent per annum from the date of petition till realisation, subject to adjustment with regard to the amount which has since been disbursed. The appeal is allowed in the above terms with costs which are quantified at Rs. 2,500.00 .