

(2004) 08 DEL CK 0014

In the Delhi High Court

Case No : FAO 31 of 1990 and CM. No"s. 1317 and 2335 of 1990

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Mahinder Kaur and Others

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (2004) 08 DEL CK 0014

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Respondent

Judgement

R.S. Sodhi, J.—This appeal has been filed by the Insurance Co. while the claimants have filed cross objections from the judgment and order dated 2.8.1989 of the Motor Accident Claims Tribunal in Suit no.109/1992 whereby the Tribunal has awarded a sum of Rs.1,50,000/- together with interest at the rate of 9% per annum.

2. Brief facts of the case as noted by the Tribunal are as follows:-

""Cases Mohinder Kaur Vs. Praladh (Suit No.109/82 and Sarjo Devi Vs. Praladh (Suit No.171/82) have been filed for compensation u/s 110-A of the Motor Vehicles Act. Both the petitions arise out of the same accident in which husband of Smt. Mohinder Kaur (claimant), Constable Azad Singh Mann, stated to have died in the accident which took place on 6.9.1981 at 1.15 P.M. at Chowk General Store when he was performing his duties as - traffic Constable and he is stated to have been run over by a vehicle No.UPB-7858 which was driven at a rash and negligent speed by driver Praladh.

The other petition has been filed by the mother of the deceased - Sarjo Devi. So, both these - petitions pertain to the death of Shri Azad Singh Mann, in an accident. Hence, both these petitions are being disposed of vide this common judgment.

As already stated, deceased Azad Singh Mann was performing his duties as Traffic Constable on 6.9.81 at chowk General Store where he tried to stop the truck No.UPB - 7858 which was being driven in a rash and negligent manner by Respondent No.1 and the vehicle struck against the deceased Azad Singh who was removed to E.S.I.Hospital where he was declared dead. Respondent No.2 is stated to be the owner of the said vehicle and respondent No.3 stated to be the insurer of the concerned truck. In the petition filed by Smt. Mohinder Kaur, mother of the deceased has been made as Respondent No.4. In the petition filed by mother of the deceased, Smt. Mohinder Kaur has been shown as Respondent No.4. Learned counsel for petitioners have stated that respondent No.1 and 2 did not file any written - statement and respondent No.3 has filed their written statement. Whereas Shri P.K. Seth, counsel for respondent no.3 has also represented and the Vakalatnama on their behalf was filed by him.

Respondent No.3 in their written statement have admitted the factum of insurance of the vehicle in question but disputed the liability on account of preliminary objections taken in their written statement. One of the preliminary objections was that separate petitions have been filed by the legal representatives of the deceased and the Policy was subject to certain conditions.

Preliminary issues were framed on condensation of delay in filing the petitions. The said issues have been decided in favor of the petitioners by order of my learned Predecessor vide order dated 7.2.1985. Following issues were framed in both the petitions:

Issues in Suit No. 109/82 -

Smt. Mohinder Kaur Vs. Praladh:

1. Whether deceased Shri Azad Singh Mann died in an accident that took place on 6.9.1981 due to rash and negligent driving of vehicle No.UPB-785 8 driven by its Driver - Respondent No.1 - Shri Praladh?
2. Whether petitioners No.1 has no locus stands to file claim petition on behalf of petitioners No.2?
- 3.Whether petitioners are the legal representatives of the deceased?
4. To what amount of compensation the petitioners are entitled and from whom?
- 5.Relief.""

3. It is contended by counsel for the claimants that the Tribunal while computing the amount due has not taken into consideration the loss of consortium and, Therefore, submits that the amount should be enhanced accordingly. Nobody appears for the Insurance Co.

4. I have heard counsel for the claimants and with his assistance gone through the record of the case and the judgment under challenge. It appears from the judgment under challenge that the Tribunal while giving relief has not taken into

consideration the loss of consortium. I, Therefore, grant an additional sum of Rs.50,000/- on account of loss of consortium together with simple interest at the rate of 9 % per annum from the date of this order to the date of realization.

5. Accordingly, the award is modified. The enhanced amount be paid in the proportion to the claimants as awarded by the Tribunal.

6. With this FAO 31/1990 is disposed of. CM.Nos.1317 and 2335/1990 also stand disposed of.