
(2012) 04 DEL CK 0157
In the Delhi High Court
Case No : FAO No. 607 of 1999

Pratap Singh and Others

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0157

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Alok Sinha with Mr. P. Ojha, for the Appellant; Kanwal Chauhdary, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM. APPL No. 6946/2012

The Appellant No. 2 has died. The other legal heirs of the deceased Rajesh are already on the record. Name of Appellant No. 2 is deleted from the array of parties.

Application stands disposed of.

FAO No. 607/1999

1. The Appellants who are the parents of the deceased Rajesh seek enhancement of compensation of Rs.99,000/- awarded for his death in a motor accident which took place on 03.03.1986. The Claims Tribunal by a judgment dated 17.09.1999 held that the accident was caused by the rash and negligent driving of the DTC Bus No. DEP-7336 by its driver Subhash Chand, Respondent No. 3.

2. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a mechanic with M/s Dwarka Motor Workshop, near police post, Rajouri Garden, New Delhi and was getting a salary of Rs.750/-, in addition to a

sum of Rs.250/- towards extra repairs. The Claims Tribunal accepted that the deceased was working as a mechanic. It accepted his salary of Rs.750/- per month, but did not take into account the extra income of Rs.250/-. The Claims Tribunal added 50% towards future prospects relying on Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and applied the multiplier of 11 to compute the loss of dependency as Rs.99,000/-.

3. The learned counsel for the Appellants has raised the following contentions:

- i) The deceased's income ought to have been accepted as Rs.1000/- per month.
- ii) No compensation towards non-pecuniary damages and funeral expenses has been granted by the Claims Tribunal.
- iii) No interest has been awarded before the year 1991. It is argued that there was no negligence on the part of the Appellants in delaying the proceedings before the Claims Tribunal. The Appellants were, therefore, entitled to interest from the date of the institution of the Petition.

4. On the other hand, the learned counsel for the Respondent Insurance Company urges that the Claims Tribunal erred in accepting the salary to be Rs.750/- per month any in granting future prospects in the absence of any evidence. The compensation awarded, argues the learned counsel, is on the higher side. It is urged that as far as award of interest is concerned, even while granting interim compensation u/s 92A of the Motor Vehicles Act, 1939, the interest was awarded only for a period of four years i.e. w.e.f. 1991. The said award having not been challenged, the finding of the Claims Tribunal that there was negligence on the part of the Appellant in pursuing the Claim Petition attained finality.

5. The Claim Petition was instituted on 11.04.1986 and was amended in the year 1990 when the insurance particulars were provided by the owner of the vehicle involved in the accident. In para 5 of the Claim Petition, it was specifically averred that the deceased was employed with M/s Dwarka Motor Workshop, near police post, Rajouri Garden, New Delhi. In para 6 it was pleaded that the deceased had an income of Rs.750/- per month and an extra income of Rs.250/- per month totaling it to Rs.1000/- per month. These averments were not denied by the Respondents either specifically or by necessary implication. The Respondents did not produce any evidence to rebut the testimony of PW4, the deceased's father that the deceased had a total income of Rs.1000/- per month.

6. There was no evidence with regard to the deceased's future prospects. In the circumstances, no addition on account of future prospects could have been made by the Claims Tribunal.

7. As far as the award of interest is concerned, in para 30 of the impugned judgment, the Claims Tribunal held that the Appellants had not been prosecuting the Claims Petition diligently and, therefore, they were entitled to interest for a period of four years only upto 27.01.1994 and thereafter w.e.f. 27.01.1994 till

the realization of the amount. A perusal of the Trial Court Record would reveal that the Claim Petition was dismissed in default on 18.03.1987 and application for restoration was moved on 06.04.1987. The grounds for adjournment *inter alia* were; the file was not available; the WS was not filed; the lawyers were on strike and the Respondent Owner of the offending bus took time in providing the insurance particulars of the offending vehicle. Of course, adjournments were also sought on behalf of the Appellants, but all the parties contributed to the delay. The liability for the delay, therefore, could not have been fastened squarely on the Appellants.

8. The contention raised on behalf of the Respondent Insurance Company that since interest was granted for a period of four years on the interim award of Rs.25,000/- also, the finding would operate *res judicata* in these proceedings for award of interest on the compensation u/s 166 of the Motor Vehicles Act, is devoid of any merit. That finding was confined to the interim award u/s 140 of the Act only.

9. In view of above discussion, the compensation is reassessed as Rs.84,000/- (Rs.1000/- X 1/2 X 14 X 12). Considering that the accident took place in the year 1986, I would award Rs.15,000/- towards loss of love and affection and Rs.5,000/- each towards loss to estate and funeral expenses.

10. The compensation is thus enhanced from Rs.99,000/- to Rs.1,09,000/- which shall carry interest @ 12% per annum from the date of the filing of the Petition till the date of the award passed by the Claims Tribunal i.e. 17.09.1999 and @ 7.5% per annum from the date of the impugned judgment till the deposit of the enhanced amount in this Court. The enhanced amount of compensation along with interest as stated earlier shall be deposited with the Registrar General of this Court within eight weeks. Since this case relates to the year 1986, the enhanced compensation along with interest shall be released immediately in favour of the Appellant No. 1. The Appeal is allowed in above terms.