

(2003) 10 DEL CK 0039
In the Delhi High Court
Case No : FAO No. 629 of 2001

Rajvir Singh and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Citation : (2004) 72 DRJ 404

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Subramaniam and Arti Mahajan, for the Appellant; R.N. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—The appellants have filed this appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal for the death of one Mrs. Shanti Devi wife of appellant no.1 and mother of appellants 2 to 6 in a road accident caused by the rash and negligent driving of the offending vehicle by its driver.

2. The only point argued by learned counsel for the appellant is that gratuitous services rendered by the deceased to the family have been evaluated by the tribunal only at Rs. 660/- per month. Learned counsel has relied upon the judgment of the Supreme Court in *Lata Wadhwa and Others Vs. State of Bihar and Others*, wherein it was observed that the multifarious services rendered by the housewives for managing the entire family even on a moderate estimate should be Rs. 3,000/- per month or Rs. 36,000/- per year. Relying upon this judgment, learned counsel for the appellant has submitted that the gratuitous services rendered to the family by the deceased ought to have been assessed at Rs. 3,000/- per month. Learned counsel has also challenged the finding of the Tribunal about its having deducted 1/3rd income from the income of the deceased towards personal expenses. It is submitted that as per the judgment of the Supreme Court in *U.P. State Road Transport Corporation Versus Trilok*

Chandra 1996 ACJ 831 where no definite evidence was available about the amount the deceased was spending upon himself, the Court should break up the family into units, taking two units for adult and one unit for the minor and dividing the entire income into these units, the units of the deceased can be deducted from the same towards his personal expenses and the balance can be taken to be the loss of dependency to the family.

3. While it is true that in *Lata Wadhwa and others Versus State of Bihar and others* (supra) the Supreme Court has observed that the multifarious services rendered by the housewives for managing the entire family could be taken at Rs. 3000/- per month, however, that judgment was given on the facts of that case. The deceased in that case belonged to the higher strata of the society and it was in those circumstances that the Supreme Court had taken the amount of Rs. 3000/- per month to be the value of the multifarious services rendered by the housewives in the absence of any other evidence. Observations of the Supreme Court in *Lata Wadhwa's* case about the value of multifarious services rendered by the deceased housewife cannot be applied to the facts of the present case. However, in the absence of any other evidence the Court can take recourse to the Second Schedule to the Motor Vehicles Act to evaluate the multifarious services rendered by the housewife. Second schedule to the Motor Vehicles Act provides that where the deceased has no income, his/her notional income prior to the accident can be taken to be Rs. 15000/- per annum. The tribunal in the impugned judgment has held that the deceased was also gainfully employed for six months in a year and her annual income from such gainful employment has been assessed at Rs. 12,000/- per annum. Since the deceased was gainfully employed for six months in a year, her services to the family cannot be evaluated in terms of the second schedule at Rs. 15,000/- per annum. This Court in the facts of the present case would not be in error if the income of the deceased for rendering multifarious services to the family is taken at Rs. 10,000/- per annum on the date of the accident.

4. Income of the deceased from gainful employment has been taken by the tribunal to be Rs. 12,000/- per annum. Adding to this the value of multifarious services rendered by the deceased the total income of the deceased as on the date of the accident comes to Rs. 22,000/- per annum. The Tribunal in the impugned order has refused to consider the future prospects in the life and career of the deceased on the ground that the job of the deceased as per evidence was not of permanent nature and she was working only for six months in the year. The Tribunal, Therefore, observed that in those circumstances, keeping in view the non-permanent nature of the work and uncertainty of job of the deceased, he did not find any reason to arrive at some notional figure of future prospects of increase in the income of the deceased.

5. In my opinion, the Tribunal has misdirected itself by not taking into consideration the future prospects of increase in the income of the deceased only on the ground that the job of the deceased was not of a permanent nature and

she was assigned job for six months in a year. That could not be a ground not to consider the future prospects. Even the minimum wages of unskilled and skilled workers are being periodically increased by the Government by issue of notifications from time to time. The job of these workers is also not of permanent nature but the same would not mean that they will not be entitled to increase in the minimum wages notified by the Government. In my opinion, the Tribunal was required to consider the rise in the cost of living and inflation to arrive at the notional income of the deceased at a future date. I am, Therefore, of the considered opinion that the principles laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, C are applicable not only in cases where the deceased has a stable income but it also applies in cases where the deceased may not have a work of permanent nature or his income is assessed either on the basis of the minimum wages or as per the notional income of non-earning persons in terms of the Second Schedule of the Motor Vehicles Act. Therefore, taking into consideration the rise in cost of living and inflation this Court would not be in error in estimating the average income of the deceased, for deciding the loss of dependency, at Rs. 33,000/- per annum.

6. In view of the judgment of the Supreme Court in U.P. State Road Transport Corporation Versus Trilok Chandra (supra) it is no longer res-integra that to arrive at the amount which the deceased might have been spending upon herself towards personal expenses, the family is to be divided into units, taking two units for an adult and one unit for a minor. The deceased besides her husband had four sons and two minor daughters. The family would thus be divided into fourteen units taking two units for each of the six adults and one unit for each of the two minors. Share per unit would work out to Rs. 2,350/-. It can thus be assessed that a sum of Rs. 4,700/- per annum was being spent by the deceased upon herself towards personal expenses. The loss of dependency to the family would, Therefore, come to Rs. 28,300/- per annum. Deceased was 39 years of age at the time of her death. Applying, Therefore, the multiplier of 16 in terms of second schedule to this loss of dependency the total loss of dependency to the family would work out to Rs. 4,52,800/-. Adding to this a sum of Rs. 20,000/- as non-pecuniary damages towards loss of love and affection, loss of estate and funeral expenses etc., as have been granted by the tribunal, the appellant would be entitled to total compensation of Rs. 4,72,800/-.

7. I, accordingly, allow this appeal, modify the impugned award and direct that the appellants would be entitled to total compensation of Rs. 4,72,800/-. The appellants would be also entitled for the interest @ 9% per annum on the enhanced compensation from the date of application before the tribunal till payment.