
(2004) 10 DEL CK 0064

In the Delhi High Court

Case No : FAO 48 of 1988

Satnam Kaur and Others

APPELLANT

Vs

Shinghara Singh and Others

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Citation : (2005) 1 ACC 672 : (2005) 118 DLT 17

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

Bench : Single Bench

Advocate : O.P. Goyal and Vikramjit Reen, for the Appellant; Sanjeev Sachdeva and Rohit Nagpal for R-2 and P.K. Seth, for the Respondent

Judgement

R.S. Sodhi, J.—FAO 48/1988 is directed against the Judgment and order of the Motor Accident Claims Tribunal, Delhi in Suit No.42/1979 whereby the tribunal vide its order dated 11.9.1987 awarded a sum of Rs.1,32,000/- together with interest at the rate of 12% per annu m.

2. Brief facts of the case are that

??A claim petition is filed for claiming compensation on account of the death of Shri Surinder Singh in a road side Vehicular accident. A sum of Rs.3,00,000/- has been claimed. The facts as pleaded in the petition in brief are that Shri Surinder Singh was a young person of 28 years and a three wheeler driver by profession. He was earning Rs.750/- per month. On 3.12.78 at about 9.55 p.m., the petitioner parked his three wheeler scooter and went to a factory situated at 63, Najafgarh Road, Delhi when he was near the gate, a truck bearing No.DHG 3700 being driven by respondent no.1 in a rash and negligent manner in due course of his employment under Respondent no.2 was coming out of the factory at a high speed and in that process is struck against the gate pillar of the factory with great force. As a result of that, the pillar fell on Surinder Singh and Ramesh Chander who was accompanying him. On account of the injuries sustained by him, due to fall of pillar on him, Surinder Singh died. He possessed good

physique and would have lived a long life if he would not have been killed in this accident. The deceased used to be provided a sum of Rs.700/- p.m. for the household expenses to her family. Besides the financial loss, the petitioner has suffered mental pain and agony specially petitioner no.1 Smt.Satnam Kaur who is a young widow of 25 years Along with petitioner no.2 Surjit Kaur and Petitioner No.2 another child of the petitioner who was in the womb of Satnam Kaur at the time of accident. The deceased has left behind petitioner no.4 and 5, the parents. Hence the petitioners are entitled to claim a sum of Rs.3,00,000/-, Respondents were duly served.

Respondent Nos.1 and 2 have filed a joint written statement denying all the facts. It has also been denied that the accident has been caused with the vehicle of the respondent. It has specifically been pleaded that no such accident has taken place with Truck No.DHG 3700 while being driven by respondent no.1 and he was not driving the truck in a rash and negligent manner. Respondent no.3 has filed a separate written statement pleading therein that there is no cause of action. The petitioners are not the legal representatives. Other facts have been denied.

Replication has been filed denying all the facts pleaded in the written statement and reasserting the facts pleaded in the petition. On the pleadings of the parties, following issues were framed :-

1. Whether Surinder Singh died as a result of rash and negligent driving of truck no.DHG 3700 on the part of the respondent no.1.?

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."

3. It is contended by learned counsel for the petitioner that the trial court has not awarded compensation on account of pain and suffering, loss of consortium, love and affection as also loss of estate. He also submits that liability of the Insurance Company in this case cannot be limited to Rs.50,000/- in as much as the required premium for an act policy was Rs.84/- while the premium paid is Rs.125/-. He relies upon the judgments of this Court in Meena Devi Vs. Sh.Ramesh Kumar and Others, and Om Wati Vs. Mohd.Din and Ors 2002 ACJ 868.

4. Having heard the learned counsel and having gone through the judgment under challenge, it appears to me that the tribunal while computing the compensation has overlooked the fact that compensation was due on account of pain and suffering to the deceased. Compensation was also due for loss of consortium as also loss of love and and affection to the children of the family and parents of the deceased. The deceased was 27 years of age at the time of accident and is survived by his wife, two daughters as also father and mother.

5. In the facts and circumstances of the case, as also keeping in view the future prospects of the deceased, I deem it proper to award a sum of Rs.20,000/- on account of pain and suffering and Rs.20,000/- on account of loss of consortium to the wife and also loss of love and affection to the minor children and parents of the deceased. The increase shall carry interest at the rate of 9% per annum with effect from the date of filing of the claim till the date of realisation. The amount may be disbursed to the widow. Further in view of the factual findings by the tribunal that the policy on examination shows that the liability of the Insurance Company is limited and there is nothing to show that additional premium has been paid, I am unable to take a different view, I hold that the insurance company's liability is limited to the policy. The award dated 11.9.1987 is modified accordingly. With this, FAO 48/1988 is disposed of.