
(2009) 04 DEL CK 0258
In the Delhi High Court
Case No : FAO No. 248 of 1997

Sh. Siri Lal and Others

APPELLANT

Vs

Delhi Transport Corpn. and Another

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0258

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Appellant; J.N. Aggarwal, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 26.3.1997 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,24,272/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 23.5.1984 at about 11 a.m., the deceased boarded bus bearing registration No. DHP 3853 owned by DTC and driven by Sh. Mahinder Singh, driver from Naroji Nagar to go to Raja Garden. Another DTC Bus was standing ahead of this bus. As soon as the deceased got into the bus, the driver started the bus speedily without getting any signal from the conductor and dashed the parked bus very closely in a very rash and negligent manner due to which the left rear of bus bearing registration No. DHP 3853 got struck with the right rear portion of the parked DTC bus as a result of which the deceased got sandwiched between the two vehicles and fell down. He was removed to AIIMS by employee of the DTC where he expired later on, on the same day.

4. A claim petition was filed on 21.11.1984 and an award was passed on 26.3.1997. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, counsel for the appellants contended that the tribunal erred

in assessing the income of the deceased at Rs. 1700/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 1929/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of Rs. 708/- from the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his parents and wife. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 25 yrs of age only and would have been earning much more in the near future. It was also alleged by the counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in an year and hence, the deceased would have earned much more in her life span.

6. The counsel also contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, mental pain and sufferings and that an amount of only Rs. 10,000/- has been awarded towards loss of expectancy of life of the deceased.

7. Mr. J.N. Aggarwal, counsel for the respondent - DTC refuted the contentions of counsel for the appellants & submitted that the amount of compensation awarded by the Tribunal is exorbitant and no further enhancement is required, therefore, this Court should not interfere with the award.

8. I have heard learned Counsel for the parties and perused the record.

9. The appellants claimants had testified Sh. Suresh Kumar, Clerk in DTC as PW5 and he had brought on record the salary slip Ex PW5/1 of the deceased. The deceased was working as a conductor with DTC, according to him and the salary slip of the deceased, his total salary was Rs. 858.92 in April 1984 out of which his basic pay was Rs. 2841 and his carry home salary was Rs. 760.92. The said witness also deposed that the scale of the conductors on the date of his deposition i.e. 28.6.1993 was Rs. 950- 1500 and he also deposed that the total salary of the conductor was Rs. 2300-2400/- pm. he also testified that the retirement age of conductor in DTC is 58 years & mostly the persons who join as a conductor retires as a conductor and rarely retire as an ATI. PW6 Sh. Siri Lal, father of the deceased deposed that the deceased was only 25 years of age at the time of accident and had he been alive and had not met with the accident then he would have been earning Rs. 3,000/- as a conductor in DTC as pay scale in DTC have been revised after 4th Pay Commission. But nothing has been brought on record to prove the same. After considering all these factors, I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 760.92/- on the basis of the salary slip Ex. PW 5/1 duly proved on record.

10. It is no more res integra that mere bald assertions regarding the income and

future prospects of the deceased are of no help to the claimants in the absence of any reliable and corroborative evidence being brought on record.

11. As regards the future prospects I am of the view that there is no sufficient material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case.

12. However, the Tribunal considered the rise in price index & the effect of 4th Pay Commission and assessed the income of the deceased at Rs. 1700/- p.m. I do not find any infirmity in the award in this regard and the same is not interfered.

13. The other contention of the counsel for the appellant is that deduction of Rs. 708/- made by the tribunal are on the higher side as the deceased is survived by his parents and wife. The Tribunal adopted unit method for calculating compensation as the case pertains to the year 1984 and at that time IInd Schedule was not brought on the Statute Book. The Tribunal accordingly assessed Rs. 566.66 as expenses which the deceased would have spent on himself and Rs. 141.66 as expenses towards out of pocket and transport expenses. The Tribunal assessed dependency of Rs. 992/- after deducting Rs. 708/- as personal expenses in the light of the decision of the Apex Court in UPSRTC and Ors. v. Trilok Chandra and Ors. jt 1996 (5) sc 356.

14. In view of the aforesaid discussion, I do not find any infirmity in the award on this count and, thus, no interference is made in the award in this regard.

15. On the contention regarding that the tribunal erred in not granting compensation towards loss of love & affection, funeral expenses, loss of estate and loss of consortium, in this regard compensation towards loss of love and affection is awarded at Rs. 10,000/-. Compensation towards funeral expenses is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium. Rs. 10,000/- has already been awarded towards loss of expectation of life, which shall be treated as compensation under the head of loss to estate.

16. As far as the contention pertaining to the awarding of amount towards mental pain and sufferings caused to the appellants due to the sudden demise the deceased and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

17. On the basis of the discussion, the total loss of dependency comes to Rs. 2,14,272/- as calculated by the tribunal. After considering Rs. 80,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,94,272/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 2,94,272/- from Rs. 2,14,272/-, thus, the differential amount shall be paid with

interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants by the respondent insurance company in the same ratio as ordered by the Tribunal.

19. With the above direction, the present appeal is disposed of.