

(2010) 09 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 362 of 2005

Smt. Durgi Devi and Others

APPELLANT

Vs

Nank Chand and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2011) 1 TAC 300

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Present appeal, u/s 173 of Motor Vehicles Act, has been filed by the claimants/dependents of deceased Perma Nand, for enhancement of compensation. Deceased Parma Nand was on board Truck No. HP-39-7768, in the capacity of owner of the goods, on 7th October, 2002, when the said truck met with an accident, in which Parma Nand died.

2. Appellants filed a petition, u/s 166 of the Motor Vehicles Act, to claim compensation. Accident was alleged to have taken place, due to rash or negligent driving of the truck. Age of the deceased was stated to be 56 years. His income was stated to be around Rs. 25,000/-per month. Petition was contested by the owner of the truck as also the insurer, i.e. New India Assurance Company, impleaded as one of the respondents in the present appeal.

3. Learned Motor Accident Claims Tribunal concluded that cause of the accident was rash or negligent driving of the truck, age of the deceased was 60 years and his monthly income was Rs. 6,500/-. Loss of dependency was assessed at 2/3rd of the total income of the deceased, which worked out at Rs. 52,000/- per annum. Multiplier of five years purchase was applied and a sum of Rs. 2,60,000/- was held to be payable to the claimants, on account of loss of dependency and another sum of Rs. 10,000/- was held to be payable to the claimants, on account

of conventional damages. Total sum of Rs. 2,70,000/- was awarded as compensation, with interest from the date of the petition.

4. Claimants' contention is that the age of the deceased was 56 years and, therefore, multiplier of nine years purchase ought to have been adopted. Also, they contend that deduction, on account of deceased's own expenses, should not have been made at 33% of gross income, but at 25% of such income.

5. I have heard the learned Counsel for the parties and gone through the record.

6. Deceased was employed as a Teacher, prior to his death. The fact is testified by claimant Durgi Devi. He, according to Durgi Devi, who appeared as AW-1, sought voluntary retirement and then started operating a truck. She testified that his age was 56 years. The fact that the deceased was employed as a Teacher suggests that he was supposed to have been atleast Matriculate, if not possessing higher educational qualification. Certificate of Matriculation was supposed to have a reference to his date of birth. That certificate having not been produced and also No. evidence from the office of Education Department, in which Department the deceased was employed as Teacher, having been produced, an adverse inference is required to be drawn against the claimants that the age of the deceased was more than what has been testified by claimant Durgi Devi (AW-1).

7. Durgi Devi (AW-1) stated that she was the second wife of the deceased and that her marriage with the deceased had taken place 35 years back. That means, her marriage with the deceased had taken place, when the deceased was 21 years of age, if her testimony that the deceased was 56 years of age, at the time of his death, is accepted, and before that the deceased had married another lady. That would mean that his first marriage took place even before he was 21 years old. For this reason also, uncorroborated testimony of Durgi Devi cannot be believed to hold that the deceased was 56 years old, when he died in the accident.

8. Postmortem report Ex. PW-2/A records the age of the deceased as 60 years. Though the age mentioned in the postmortem report can also not be said to be evidence of exact age of the deceased, but this being a document relied upon by the claimants themselves can be used against them. Therefore, no fault can be found with the conclusion of the learned Tribunal that the age of the deceased was 60 years.

9. Multiplier of five years purchase has been adopted by the Tribunal. Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, vide Para-42, has held that multiplier of nine years purchase should be adopted where the age of the deceased is 56 to 60 years. Relying upon this judgment, learned Counsel submits that multiplier of nine years purchase be adopted. In the present case, as is being noticed in the later part of this judgment, learned Tribunal, while working out the gross income of the deceased at Rs. 6,500/-, has taken into account his pension at the rate of Rs. 6,000/- per

month. Claimant Durgi Devi, the widow of the deceased, is drawing family pension of Rs. 6,000/- per month, on account of the death of the deceased. Thus, the Tribunal has gravely erred, while working out the loss of dependency, in terms of money.

10. Another submission made on behalf of the claimants is that deduction, on account of deceased's own expenses, should not have exceeded 1/4th, because the Hon'ble Supreme Court, in the aforesaid judgment, has held, vide Para-30, that where the deceased has four to six dependent family members, deduction should not be more than 1/4th. In the present case, learned Tribunal has worked out the total income of the deceased at Rs. 6,500/-, and while working out this income, pension, which the deceased had been drawing, has also been taken into account. Deceased was drawing pension of Rs. 6,000/- per month. After his death, his widow claimant Durgi Devi is drawing the same amount of money as family pension and, therefore, there is in fact no loss of income from pension, on account of the death of the deceased. Therefore, I do not think it will be reasonable to make a cut at the rate of 1/4th, instead of 1/3rd as done by the learned Tribunal, from the gross income assessed by the Tribunal, on account of self expenses of the deceased.

11. In view of the abovestated position, especially the fact that the claimants-appellants have not suffered any loss of income from pension, no case for enhancement of compensation is made out. Hence, the appeal is dismissed.

Appeal stands disposed of accordingly.