

(2004) 03 DEL CK 0033

In the Delhi High Court

Case No : FAO 147 of 1993 and CM No. 36 of 2003

Smt. Sushma Rani and Others

APPELLANT

Vs

Sh. Sushil Kumar Dua and Another

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Citation : (2005) ACJ 318 : (2004) 114 DLT 418

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—This appeal is filed by the appellants who are four in number. Appellant No.1 is the widow of Sh. Ajit Kumar Sharma (hereinafter referred to as 'the deceased') and appellants 2 to 4 are his children. The mother of the deceased was also arrayed as respondent No.5 before the Motor Accidents Claim Tribunal (for short 'the Tribunal'). However, she died on 13th December, 1985 and as the appellants 1 to 4 were her legal representatives and already on record, her name was deleted from the array of parties by the Tribunal.

2.The cause of filing the petition before the Tribunal was the death of Sh. Ajit Kumar Sharma as a result of accident caused by car No.DIB-2391 on 8th March, 1985 which was driven by Sh. Sushil Kumar Dua, respondent No.1. This car was insured with respondent No.2, M/s New India Assurance Company Ltd. Sh. Sharma died on account of injuries on 11th March, 1985. The deceased was aged about 42 years and was working as a teacher in Lions Vidya Mandir, Kashmir House, Teen Murti. In this petition the appellants claimed a sum of Rs.5 lacs with cost and interest as compensation from the respondents. Vide judgment dated 26th April, 1993 the Tribunal awarded a sum of Rs.3,57,000/- as compensation to be paid to the appellants herein along with interest at the rate of 12 per cent per annum on the awarded amount from the date of filing of the petition till

realisation. It was, however, clarified that the appellants would not be paid any interest for the period from 6th December, 1988 to 21st March, 1990 as the petition was dismissed in default on 6th December, 1988 and restored on 21st March, 1990 for which respondents were not to be blamed. It was also directed that out of the aforesaid sum of Rs.3,57,000/- the appellant No.1 shall be paid a sum of Rs.2,07,00/- and appellants 2 to 4 would be give a sum of Rs.50,000/- each. Some other directions as to how this amount is to be dealt with were also given.

3. Not satisfied with the quantum of compensation awarded to the appellants by the Tribunal, present appeal is preferred.

4. Learned counsel for the appellants pointed out that while calculating the compensation, the Tribunal took into consideration the salary which was being paid to the deceased at the time of his death, i.e., Rs.2,280.85 paise per month and holding that out of this the deceased would have contributed towards family (the appellants income Rs.1,750/ p.m. i.e. Rs.21,000/- per annum) and applying the multiplier of 17 compensation of Rs.3,57,000/- was arrived at. His submission was that ample evidence was produced before the Tribunal to show the salary which the deceased would have drawn from time to time but it was not taken into consideration while calculating the compensation which is contrary to the judgment of the Supreme Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, .

5. Nobody appeared on behalf of the respondents. I have heard learned counsel for the appellants. Learned counsel for the appellants has taken me through the evidence. It has come on record that PW-5 Mr. R.P. Gupta working as UDC in Lions Vidya Mandir, Kashmir House, Teen Muri brought the service record of the deceased as per which he was drawing total emoluments of Rs.2,280.85 paise at the time of his death. However, he has also stated the salary which the appellants would have drawn, after getting increments every year, on 1st January, 1986 to 1st January, 1990 and onward. PW-7 Mr. M.S. Verma, Vice Principal of the school also appeared and he testified the salary which the deceased would have drawn every year from 1st January, 1986 to 1st January, 2002. Had the deceased been alive and continued in service he would have retired in the year 2002. As per this witness whose statement was recorded on 18th September, 1992 the salary of the deceased would have been Rs.6,144/- as on 1st January, 2002 in he pre-revised pay scale of Rs.1640-2900. It is a matter of common knowledge that this pay scale was revised upward with effect from 1st January, 1996 pursuant to the recommendations of the V Central Pay Commission. The school where the deceased was wring, being aided and recognised, the said recommendations were made applicable to the teachers of this school as well. It would be clear from the fact that even earlier the deceased was drawing salary in the pay scale recommended by the IV Central Pay Commission. Since on the day when PW-7 was examined i.e.18th September, 1992 the Pay Commission had not come into force which was effective from 1st

January, 1996 only, he gave the calculations of salary which would have been drawn by the deceased even after January, 1996 on the basis of pre-revised pay scale.

6. During the pendency of this appeal appellants filed application (CM No.36/2003) under Order 41 Rule 33 CPC read with Sections 56, 57 and 74 of the Indian Evidence Act for taking on record original letter dated 13th December, 2002 written by the school showing the salary which the deceased would have drawn after the implementation of the V Central Pay Commission with effect from 1st January, 1996. Order dated 2nd September, 2003 was passed on his application to the effect that this application would be considered at the time of final arguments. It may be noted that although this application was filed on 1st January, 2003 which is supported by the affidavit of appellant No.1, no reply to this application is filed by the respondents. Nobody appears even today to oppose this application.

7. As already mentioned above, had the deceased been alive and worked in the school even in the same position (promotions which he could have earned are not taken into consideration) he would have got the salary as fixed by the Government/Pay Commission from time to time and thus he would have been entitled to benefits of the fixation of salary as per the recommendations of V Central Pay Commission. There is, Therefore, no reason not to take into consideration this additional evidence more particularly when, on taking this additional evidence on record, we can find out the exact salary which the deceased would have earned.

8. Similar exercise was done by the Supreme Court in the case of Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, and by this court in the case of Subhadara Kumar and others Vs. Lallu Ram and others reported in 1 995 ACJ 935 on the ground that it was permissible for the claimants to place on record even before the appellate court documents to indicate salary and allowances which would have been payable to the deceased from the date of death as that would be relevant for determining the compensation to know the present salary structure. While coming to aforesaid conclusion, this court had relied upon the judgment of the Supreme Court in the case of Billa Jagan Mohan Reddy Vs. Billa Sanjeeva Reddy reported in (1994) 4 CC 659. Therefore, there is every justification to take the aforesaid material evidence into consideration while determining the compensation. After all the function of the Court purpose is to find out the income which the deceased would have earned for the purpose of computing the compensation. From attendant circumstances, the Courts undertake guessing exercise. However, wherever evidence is forthcoming disclosing with exactitude the income which the deceased would have earned, the Court would welcome such piece of evidence instead of indulging in guest mating game and taking a shot in the dark on the basis of certain hypothesis.

9. CM No.36/2003 is accordingly allowed.

10. As per the evidence on record, the deceased would have earned his pay and allowances from time to time in the following manner:

""Year Basic Pay Gross Pay 1.1.86 2,420-00 p.m. 2,957-00 p.m. 1.1.87 2,480-00 p.m. 3,144-00 p.m. 1.1.88 2,540-00 p.m. 3,308-00 p.m. 1.1.89 2,600-00 p.m. 3,863-00 p.m. 1.1.90 2,600-00 p.m. 4,149-00 p.m. 1.1.91 2,660-00 p.m. 4,469-00 p.m. 1.1.92 2,660-00 p.m. 4,921-00 p.m. 1.1.93 2,750-00 p.m. 5,683-00 p.m. 1.1.94 2,900-00 p.m. 6,613-00 p.m. 1.1.95 2,975-00 p.m. 7,267-00 p.m. Vth Pay Co. 1.1.96 9,300-00 p.m. 9,300-00 p.m. 1.1.97 9,500-00 p.m. 10,260-00 p.m. 1.1.98 9,700-00 p.m. 14,646-00 p.m. 1.1.99 9,900-00 p.m. 15,823-00 p.m. 1.1.2000 10,100-00 p.m. 17,668-00 p.m. 1.1.2001 10,300-00 p.m. 18,519-00 p.m. 1.1.2002 10,500-00 p.m. 19,150-00 p.m.

11. Thus we have a case before us wherein, accurate, authentic, faultless and perfect amount of income which the deceased would have earned is available and it is possible to work out the precise income without resort to any formula. Taking into consideration the aforesaid income the deceased would have earned total emoluments of approximately Rs.12 lacs till his retirement and contributed about Rs. 8 lakhs towards family, after excluding his personal expenses, and this would be fair compensation to be awarded to the appellants.

12. However, I have already noticed that in the petition filed before the Tribunal, the appellants claimed a sum of Rs.5 lacs only. The question that would, Therefore, arise for consideration at this stage is that as to whether the appellants would be entitled to compensation of more than Rs.5 lacs. Precisely the same question came up for consideration before the Supreme Court in the case of Nagappa Vs. Gurudayal Singh and Others, and the court opined that when the purpose was to award ""just compensation"", the courts were within their power to award more than claimed compensation. It was held that once it is found that the just compensation which is reasonable on the basis of evidence on record is more than the compensation claimed in the petition, there was no restriction on the power of the court to award such a compensation. Discussion to this effect can be found in para 7 of the aforesaid judgment which is in the following terms:

""Para 7: Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act'), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death or, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or

both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by an agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act". Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

13. To the same effect is the judgment of the Madhya Pradesh High Court in the case of Abdul Rashid and Others Vs. Jitendra and Others, .

14. This appeal is accordingly allowed. The appellants shall be entitled to compensation of Rs.8 lacs. In so far as interest is concerned, it would be calculated at the rate of 12 per cent per annum till the decision of the Tribunal, i.e. From the date of institution of the petition on 28th May, 1985 till the date of decision on 26th April, 1993 (excluding the period from 6th December, 1988 to 21st March, 1990) and with effect from 27th April, 1993 till payment of the amount, the appellants shall be entitled to interest at the rate of 7 per cent per annum. The amount shall be distributed among the appellants in the same proportion as determined by the Tribunal.

15. There shall be no order as to costs.