

(2003) 07 DEL CK 0023
In the Delhi High Court
Case No : FAO No. 64 of 1983

Smt. Veer Bala and Others

APPELLANT

Vs

Shri Piara Singh and Others

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Citation : (2003) 3 ACC 164 : (2004) ACJ 1771 : (2003) 7 AD 282 : (2003) 106 DLT 111 : (2003) 71 DRJ 678

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

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; Shyam Moorjani and J.N. Aggarwal, for the Respondent

Judgement

S.K. Mahajan, J.—The appellants had filed a claim before the Motor Accident Claims Tribunal for the death of Mr.Anand Swarup Goel, husband of appellant no.1 and father of other appellants, alleged to have been caused by the rash and negligent driving of the offending bus at the relevant time by its driver-respondent no.3. The claim petition was filed not only against respondent no.3, the Rajasthan State Road Transport Corporation but also against the Delhi Transport Corporation on the allegations that the bus was being plied at the instance of D.T.C. The driver of the bus was also made a party to the claim petition. The Motor Accident Claims Tribunal after the pleadings were completed framed the following issues:-

1. Whether Sh.Anand Swarup Goel sustained fatal injuries due to rash and negligent driving of bus No.RSL-5937 on the part of the respondent no.1?
2. Whether the petitioners are the legal representatives of the deceased?
3. Whether respondent no.4. Is not liable for the reasons alleged in preliminary objection of its written statement?
4. Whether the accident was due to negligence of the deceased as alleged in the

written statement filed by respondent no.1?

5. To what amount of compensation, if any, are the petitioners entitled and from whom?

6. Relief.

2. After recording evidence and hearing the parties the Tribunal held that the accident was caused due to the rash and negligent driving of bus by its driver and the appellants being the legal heirs of the deceased were entitled to compensation. After holding that the deceased at the time of his death was 41 years of age and was having an income of Rs.750/- per month, the Tribunal calculated the compensation at Rs.90,000/- and after deducting 15% for lump sum payment awarded Rs.76,500/- in favor of the appellants. Aggrieved by this award, the present appeal is filed for enhancement of the compensation.

3. The only point urged by the parties in the present appeal is whether the Tribunal has rightly assessed the income of the deceased. The contention of Mr.Goel, learned counsel appearing on behalf of the appellant is that since the deceased was paying a sum of Rs.1500/- per month as household expenses to his wife, the Tribunal has erred in assessing his income at Rs.750/- per month. It is submitted that the deceased at the time of his death was earning a minimum sum of Rs.2000/- per month and he, Therefore, submits that the compensation should have been assessed on this income of Rs.2000/- per month after taking into consideration the future prospects of the deceased.

4. After having gone through the material on record and having heard learned counsel for the appellant, I am unable to agree with Mr.Goyal insofar the income of the deceased is concerned. At the relevant time even an income of Rs.1000/- was assessed to Income Tax. The deceased was admittedly not assessed to income tax. His income, Therefore, could not be taken to be more than Rs.1000/- per month. On the basis of the statement of the parties, in my opinion, the Tribunal was, Therefore, justified in assessing the monthly income of the deceased at Rs.750/- per month. However, the Tribunal, in my view, has clearly erred in not taking the future prospects in the life of the deceased while computing the loss of dependency to the appellants. It is now well-settled as held by the Supreme Court in Sarla Dixit and another Versus Balwant Yadav and others 1996 ACJ 581 that at the time of assessing the income of the deceased, the Court must take into consideration the future prospects in the life of the deceased. Keeping in view the observations of the Supreme Court in Sarla Dixit and another Versus Balwant Yadav and others (supra) this Court will not be in error in assessing the average income of the deceased at Rs.1500/- per month. After deducting 1/3rd from this income towards his personal expenses the loss of dependency, in my opinion, to the family would be Rs.1000/- per month or Rs.12,000/- per year. Applying the multiplier of 15, in terms of the Second Schedule of the Motor Vehicles Act, the compensation to which the appellants would be entitled comes to Rs.1,80,000/-. I, accordingly, enhance the

compensation to Rs.1,80,000/- from Rs.76,500/- and direct that the appellants would be entitled to this enhanced compensation along with interest @ 9% per annum from the date of filing of the appeal till the date of its payment from respondent No.3, owner of the bus. The amount deposited in this Court be paid to the appellant after notice to respondent no.3. With these observations, the appeal stands disposed of.