(2007) 01 DEL CK 0106

In the Delhi High Court

Solochana Marwah APPELLANT

Vs

Sadhu Ram RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Citation : (2007) 2 ACC 163

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Judgement

Pradeep Nandrajog, J.—Amar Nath Marwah, a tax practitioner, while driving a two-wheeler was hit by a truck bearing No. RSM 9295 on

Ring Road. The time was 9.15 a.m. The date was 20th November, 1977. He was born on 4th January, 1943. He was about 35 years old when

the accident took place. He died on the spot.

2. His widow, Sulochana Marwah, three minor children--a son and two daughters filed a claim petition impleading the owner, driver and insurer of

the vehicle as respondents.

3. Since the award pertaining to issue No. 1 wherein issue of rashness and negligence has been decided by the Tribunal has attained finality I need

not note the facts relating to the accident.

4. Only issue is whether the compensation awarded is fair and reasonable.

5. The learned Tribunal has assessed the income of the deceased at Rs. 1,800/- per month. Appropriating Rs. 500/- as the personal expenses of

the deceased, Rs. 1,300/- per month has been treated as the monthly loss to the family. Annual loss has, Therefore, been determined as Rs. 1,300

ï¿½ 12 = Rs. 15,600/-. Considering the age of the deceased, multiplier adopted is 30. Total compensation awarded is Rs. 15,600 ï¿½ 30 = Rs.

4,68,000/-. The widow has been paid Rs. 1,68,000/-. The three minor children have been paid Rs. 1 lac. each.

6. The Tribunal has noted that the wife of the deceased proved his income tax returns. After noting the income tax returns it has been held that the

income of the deceased was Rs. 1,800/- per month.

7. I find a patent error in the award as regards the monthly income of the deceased for the reason it has been determined pertaining to the

assessment year 1978-79. Without Realizing that the deceased died in November, 1977 and had earned only for 8 months for the previous year.

8. Income tax returns show that for the assessment year 1974-75 professional income was Rs. 8,700/-. Income from other sources was Rs. 655/-

. For the assessment year 1975-76, income from profession was Rs. 13,000/-. Income from other sources was Rs. 1,440.05. For the assessment

year 1976-77 professional income was Rs. 16,630.71 income from other sources was Rs. 1,034.70. For the assessment year 1977-78 the

professional income was Rs. 23,690.09. Income from other sources was Rs. 4141.62.

9. The learned Tribunal appears to have been misguided for the return of the assessment year 1978-79 which showed professional income of the

deceased at Rs. 19,677.47. Said figure appears to have been treated as the basis to determine monthly income at Rs. 1,800/-.

10. The learned Tribunal forgot that the deceased died on 20th November, 1977. The assessment year 1978-79 relates to the income of the

previous year.

11. The evidence on record being income tax assessment orders show a steady rise in income. From the assessment year 1974-75 to the

assessment year 1977-78 income jumped from Rs. 8,700/- to Rs. 23,690/- i.e. by nearly 280%.

12. Thus, the second error committed by the Tribunal is not to consider the future prospects. As noted above income of the deceased has revealed

a rising trend .Assuming that the deceased would have earned a living till the age of 60, noting that he was 35 years old when he died, over the next

25 years income of the deceased would have, if not less, at least doubled.

13. I treat the income of the deceased when he died at Rs. 25,000/- per annum.

Doubling the figure, income would have arisen to Rs. 50,000/- by

the time deceased would have stopped earning. The mean average income of the deceased comes to Rs. 37,500/-.

14. Considering that the deceased was maintaining besides self, his wife and three minor children. 1/4th of the income of the deceased is

appropriately towards self. The loss of dependency to the family accordingly works out to Rs. 28,125/-.

15. Question arises as to what multiplier has to be applied.

16. The accident relates to the year 1977. As per the law applicable then, remaining life expectancy of the deceased as also of the dependents had

to be taken note of. Period for which children would have remained dependent upon the father had to be taken note of. The amount of

compensation had to be discounted in the context of lump sum payment. The idea was to secure a sum to the family taking into account the interest

it would have accrued as also corpus being depleted every year so that by the end of the period of dependency, nothing would be left in the

corpus.

17. This exercise was cumbersome. A guiding factor was introduced in the year 1994 in the Motor Vehicles Act, 1988 when a structured formula

was inserted in the statute book.

18. I cannot take the help of the structured formula for the reason I have to decide the present appeal in relation to the law as was in force in the

year 1977.

19. Keeping in view the life expectancy, multiplier adopted by the Tribunal is 30. I have found fault with the Tribunal in not giving benefit of future

increase in earnings of the deceased by not looking into the rising income of the deceased as evidenced in the past. Since benefit thereof has been

given by me, some discount would have to be given on account of the fact that the money is being paid over to the claimants as a lump sum

amount. Accordingly I treat the multiplier to be 20. The loss of dependency will come to Rs. 28,125 ï¿½ 20 : 5,62,500/-.

20. The loss to the family is accordingly determined at Rs. 5,62,500/-.

21. Noting that nothing has been awarded to the family on account of funeral expenses of the deceased; loss of consortium to the wife and loss of

love and affection to the children, I award a conventional damage of Rs. 15,000/- to the family under said heads. The total compensation,

Therefore, works out to Rs. 5,77,500/-. Under the award compensation is assessed at Rs. 4,68,000/-.

22. I enhance the compensation by a further sum of Rs. 1,09,500/-.

23. The enhanced compensation shall be paid by the respondents Along with interest @ 6% per annum from the date of the claim petition till the

date of realisation.

24. I direct that the enhanced compensation shall be paid over only to Sulochana Marwah, the widow of the deceased being appellant No. 1.

25. No costs.

