

(1987) 01 DEL CK 0056

In the Delhi High Court

State of Haryana and Another

APPELLANT

Vs

Padma Wati and Others

RESPONDENT

Date of Decision : 13-01-1987

Acts Referred:

Citation : (1987) 1 ACC 423 : (1987) ACJ 980

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

S.B. Wad, J.—This is an appeal against the award of the Motor Accident Claims Tribunal, Delhi, holding that the vehicle belonging to the State of Haryana Roadways was responsible for causing the death of Sultan Singh on 2-2-1970 at Patel Chowk, Parliament Street, New Delhi. The Tribunal has awarded a sum of Rs. 33,600/- as compensation to the widow and eleven children of the deceased. The claimants have filed the cross-appeal asking for the enhancement of compensation. They had claimed Rs. 50,000/-towards the compensation in the claim petition. The Tribunal had relied mainly on the evidence of Dushyant Kumar Sharma (PW-5) who was the eye witness. The Tribunal has disbelieved Respondent No. 1 the driver of the offending vehicle. After analysing the evidence the Tribunal held:

Notwithstanding the above omissions, the attending circumstances are material. According to Dushyant Kumar Sharma, the deceased had just stepped down from the pavement to cross the road when the bus came from his left side and the front portion of the bus hit the deceased who fell down and the wheel of the bus passed over the body of the deceased crushing him to death. According to Respondent No. 3, Banarsi Dass RW-1 the deceased came running and quashed against the left side body of the bus. In other words, it was not a case of running over. The death of the deceased on the spot is an admitted fact. Had the deceased not been hit and run-over, the instant death by simply striking against the left side body of the bus as claimed by respondents could not have been caused. It is further pertinent to note that there is allegation that the deceased

was running across the road and in that process collided against the bus. According to R.W. 1, Driver Banarsi Dass, there was heavy traffic at the round about. It does not stand to reason that the deceased could possibly run through the stream of traffic and reach the other end. The bus was not in fast speed is evident from the fact that even according to PW-5 Dushyant Kumar Sharma the bus stopped at a distance of two steps from the place of impact. If the version propounded by Banarsi Dass, RW-1 is to be believed that the pedestrian had struck against the left side body of the bus, the obvious result would be overthrowing of the deceased away from the body of the bus; he could not be crushed under the wheels of the bus especially when the bus was brought to standstill immediately within the distance of two steps. It is thus apparent that it is the front right side of the bus which struck the deceased who was then crushed under the wheel of the bus resulting in instant death. The preponderance of evidence coupled with circumstances clearly leans in favor of petitioners and it must be held that the accident was the direct off-spring of the negligent act of driving of bus-HRG-1679 on the part of respondent No. 3. There was no negligence whatsoever on the part of deceased. Both issues are decided accordingly.

2. The appellants have contended that the Tribunal erred in relying on the testimony of the eye witness. It is submitted that Dushyant Kumar Sharma, PW 5, was not examined in the criminal case and, Therefore, the Tribunal should not have believed his version. This is not relevant for the purposes of the compensation claimed under the Motor Vehicles Act. I am taken through the evidence of the eye witness and I do not find any infirmity in the same. It is then submitted that no site plan of the accident, nor the photographs taken immediately after accident are produced. The counsel for the claimants has submitted that the widow who had immediate problem of looking after 11 children was doing her best to prosecute the matter un-aided by anyone else. She had written to the Investigating Officer for the production of the site plans but there was no response from the Police. It is also submitted that the widow did not have sufficient money to pay for the copies of the photographs and hence the positives of the photographs taken were not available with her. I agree with the Tribunal that the absence of the site plan or the photographs are not of much consequence, and the facts of the case are quite clear. It is then submitted by the appellants that the Tribunal was wrong in ignoring the version of the driver, RW-1, that the deceased was hit from the left side of the bus. I do not agree with these submissions. The Tribunal has correctly analysed the evidence of RW-1. The fact that the deceased died on the spot speaks for itself, namely, that the bus was being driven at a very high speed and secondly that the deceased would not have died if he was not run over by the bus This was not possible if the deceased was hit by the left side of the bus. It is also an admitted fact that at the time of the accident there was heavy traffic at Parliament Street. The accident took place at 6 P.M. and usually there is very heavy traffic at Parliament Street after the offices are closed.

3. The appellants have then submitted this the Tribunal should not have taken the income of the deceased at Rs. 500/- per month. It is true that there is no documentary evidence as regards the income of the deceased. He was carrying on the business of commission agent and property dealer and the widow could not produce any documentary evidence. However, she has stated in her examination that his income was about Rs. 700 to Rs. 800/- per month. This fact is supported by family Doctor Bhatnagar who was examined as a witness. The trial court was not wrong in accepting the income at Rs. 500/- per month. There is no merit in the appeal. The appeal is dismissed.

4. In the cross-objections it is contended that the Tribunal ought to have worked out the compensation on the basis of Rs. 800/- per month. I have already held that there is no documentary evidence of proving the exact income of the deceased and, Therefore, the Tribunals, approach in taking the deceased's income at Rs. 500/- per month was quite reasonable. The age of the deceased at the time of death was around 55 years. There is no merit in the submission of the State of Haryana that his age was 65 years. The Tribunal was quite right in believing the age as given by the widow. The Tribunal's approach in awarding the compensation is broadly correct, except of deduction of 20% as lumpsum payment and not awarding the interest. Considering the fact that the accident had taken place in 1970 and no payment has been made to the claimants for the last more than fifteen years and further fact that the widow is required to support eleven children, I direct that no deduction shall be made on account of lump sum payment. I, Therefore, make an award of Rs. 42,000/-. The claimants are also entitled to simple interest @ 6 per cent per annum from the date of the application for compensation. The simple interest @ 6 per cent on the amount of Rs. 42,000/- shall be payable from the date of application till the date of the deposit of the compensation amount as directed by this court, on 7-1-1980. The claimants shall also be entitled to 6 per cent simple interest on the additional amount of compensation awarded by me from the date of the said deposit till the realisation of the amount. The cross appeal is partly allowed. The claimants shall be entitled to withdraw the amount already deposited in the Tribunal. For the additional compensation awarded and the interest, as directed above, the State of Haryana shall deposit the cheque for the said amount with the Registrar of this Court within two months from today. The Registrar shall, after issuing notices to the claimants, make disbursement of the amount.