

(1995) 07 DEL CK 0018

In the Delhi High Court

Case No : FAO No. 263/79 and C.M. No. 2069/94

Subhadara Kumari and others

APPELLANT

Vs

Lallu Ram and others

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Citation : (1996) 1 ACC 299 : (1995) ACJ 935 : AIR 1996 Delhi 64 : (1995) 59 DLT 193 : (1995) 34 DRJ 338

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; S.C. Sharda and S.D. Salwan, for the Respondent

Judgement

C. M. No. 2069/94

1. This application has been filed by the appellants under O. 41, R. 33 read with S. 151 of the CPC and S. 74 of the Evidence Act. The appellants have moved this application to place on record certain documents to indicate the salary and allowances which would have been payable to the deceased from the date of his death till January, 1994 if he had not been killed in the accident. The deceased Chhajju Singh was about 28 years of age and was working as constable in Delhi police drawing the total emoluments of Rs.312/- per month at the time of accident which took place on August 3, 1972. The appellants have brought on record the official documents, which would indicate the present salary structure of the post which the deceased was holding at the time of his death. These documents have been issued by the concerned department i.e. by the office of the Deputy Commissioner of Police, New Delhi, and do not require corroboration or any evidence to prove the same. The position of law is well settled that the appellate Court can receive additional evidence if it considers to be needed in the interest of justice. (Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva Reddy and Others,). The deceased was born on 5th January, 1943 and would have continued to work till the age of his superannuation on 5th January, 2001.

Therefore, it will be relevant to know the present salary structure of the post which the deceased was holding. In view of the facts of the present case and in the interest of justice, the application is allowed.

FAO No. 263:79

2. The present appeal is directed against the award dated August 10, 1979 of Shri H. P. Bagchi, Judge, Motor Accident Claims Tribunal, Delhi. The appellants filed a petition u/s 110A of the Motor Vehicles Act against the respondents claiming compensation of Rs. two lakhs for the death of Shri Chhajju Singh in an accident, alleged to have taken place on 3rd August, 1972 at about 3.45 p.m. The deceased Chhajju Singh was traveling in bus No. DLP 5062 from Patel Chest Institute towards Civil Lines and when the bus was taking a turn towards Civil Lines on Mall Road, truck bearing No. DLL 7819. driven by respondent No. 1 came on the road and the front of the truck hit the bus in which the deceased was (traveling with great force. As a result of the impact, the bus overturned and the deceased was thrown out and was fatally injured and died on the spot. The deceased possessed good physique and had he not been killed in the accident, it is alleged, he would have lived to the age of 80 years as there is history of longevity of life in the family. The truck was owned by respondent No. 2 and respondent No. 1 was driving the same in the course of his employment. The said truck was insured with respondent No. 3. Respondent No. 4 was made a party as he was the driver of the bus in which the deceased was traveling and the said bus was owned by respondent No. 5 and insured with respondent No. 6. The bus was running under the operation of Delhi Transport Corporation at the time of accident. The usual pleas of denial and limited liability were taken by the respondents in their respective written statements.

3. Following issues were framed :

1. Whether Chhajju Singh sustained fatal injuries due to rash and negligent driving of truck No. DLL 7819 on the part of the respondent No. 1 and or bus No. DLP 5026 on the part of respondent No. 4 ?

2. Whether the petitioners are the legal representatives of the deceased ?

3. Whether the respondent No. 7 is not liable for the reasons alleged in the preliminary objections of its written statement ?

4. Whether the respondent No. 6 is not liable for the reasons alleged in the preliminary objections of its written statement ?

5. Whether the respondent No. 3 is not liable for the reasons alleged in para 1 of the preliminary objections of its written statement?

6. Relief.

4. The Tribunal disposed of issue No. 1 by holding that the accident was the result of the composite negligence on the part of the drivers of the bus as well as of the truck. This conclusion was based on appreciation of evidence on record

and it has been reiterated that (sic) was decided in favor of the appellants and they were held to be the legal heirs of the deceased. Issue No. 3 related to the liability of Delhi Transport Corporation, respondent No. 7 herein. It was held that the Delhi Transport Corporation had entered into an agreement with the owner of the bus and it was in evidence that the driver of the bus was under the employment of the owner and the bus after the accident was got released by the owner. The issue was decided in favor of respondent No. 7 and the Corporation was held not liable to pay any compensation. The liability of respondent No. 6 was discussed in issue No. 6 and the learned Judge held the said respondent was liable to pay compensation to the extent of Rs. 5,000/- only as the deceased was a passenger of the bus. This liability was assessed on the basis of the provisions of Motor Vehicles Act. The liability of respondent No. 3 was assessed only to the extent of Rs. 50,000/-.

5. The learned counsel for the appellants has assailed the award on the following grounds :

A. There was no material on record to limit the liability of respondent No. 6 to the extent of Rs. 5,000/- only as the said respondent neither proved the policy nor filed the carbon copy of the same to bring it u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939 wherein reference is made to the award of compensation for each individual passenger.

B. The liability of respondent No. 3 was wrongly assessed at Rs. 50,000/- as neither the original policy has been produced nor any cogent evidence has been placed on record to justify this conclusion.

C. The award of compensation is very much on the lower side and the entire claim of Rs. two lakhs should have been allowed in the facts and circumstances of the present case.

6. The Tribunal has dealt with the first point in favor of respondent No. 6 merely on the ground that the statute provides the liability of respondent No. 6 to pay compensation to the extent of Rs. 5,000/- in respect of death of a passenger. The policy in respect of the offending bus has not been proved. The evidence of R6W1, Shri R. P. Sawhney, Senior Assistant, New India Assurance Co. Ltd., clearly indicates that the bus was insured with effect from November 9, 1971 to November 8, 1972. The original policy was issued to respondent No. 5. The said witness further states that the carbon copy maintained by the office has been destroyed because all records are destroyed after 3 years. The copy which was produced before the Tribunal was prepared on the basis of the carbon copy of the letter dated September 21, 1973 issued to counsel Shri S. R. Sarna on that date. Therefore, it is clear the said respondent could neither produce the original policy nor the carbon copy was available. The learned Judge was right in attaching no significance to the said copy of the policy which was prepared in the above circumstances. In this background it was wrong to hold that the liability of the company was only to the extent of Rs. 5,000/- when no such plea can be held to

be established on the basis of evidence on record. There is force in the contention of learned counsel for the appellants. The same is, accordingly, upheld.

7. The question of liability of respondent No. 3. which has been confined to Rupees 50,000/- may now be considered. The Tribunal has not discussed any evidence in this regard and has only held in the concluding part of the award that the liability of the respondent will only be to the extent of Rs. 50,000/-. There is no discussion on this plea. I have been taken through the evidence by learned counsel for respondent No. 3. He has referred me to the policy, Ex. RW2/1, which is alleged to be the carbon copy of the original policy. The original was not produced. The bare reading of the same indicates the premium paid and it is argued that the amount as stated therein would only cover the limited liability of the company. There is no other document which is attached to this copy nor any terms and conditions have been filed along with the same. It is interesting to refer to the evidence of RW2, D. K. Kapur wherein the said witness has stated in the cross-examination as follows :

"It is incorrect that Ex. RW2/1 is not the correct copy of the original policy. Subject items are not mentioned in Ex. RW2/1. The warrantee and endorsements are attached with the original but they are not attached with the office copy. I cannot tell orally what were the terms and conditions of the original policy, I have not brought any other paper except the carbon copy of the policy Ex. RW2/1. Premium register is available in our office."

On further re-examination, the said witness has stated as follows :

"The policy pro formas, warrantees and endorsements issued in 1971 are no more available with the company. It is wrong to suggest that liability provided by the Company under the policy of Insurance was in addition to the liability required under statute. I do not know what the third party premium in 1971. It is correct that in this policy the basic premium charges is more than third party premium."

The reading of the above testimony will demolish the case of the respondent and it cannot be said that the liability of respondent No. 3 was limited to the extent of Rs. 50,000/ -.

8. The learned counsel has strongly relied on the judgment of the Supreme Court, as reported in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, to state the proposition that "comprehensive insurance of the vehicle and payment of higher premium on this score do not mean that the limit of the liability with regard to third party risk become unlimited or higher than the statutory liability fixed under subsection 2 of Section 95 of the Act. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf." There is no doubt about this proposition but the above said respondent has neither produced the original policy nor established its terms and conditions and is only seeking to rely

on one sheet of paper which does not indicate that the company is no more liable to discharge the liability as assessed by the Tribunal. The above said judgment will, Therefore, be of no application to the facts of the present case. The contention of learned counsel for respondent No. 3 is, accordingly, rejected. The finding of the Tribunal that the liability of the said respondent is only to the extent of Rs. 50,000/- is reversed.

9. Coming now to the quantum of compensation as awarded by the Tribunal, the admitted facts are that the petitioner was a constable in Delhi Police at the time of accident on August 3, 1972. He was born on January 1, 1943 and, Therefore, was correctly held to be aged 28 years at the time of his death. The Tribunal on the basis of evidence on record fixed the dependency at Rs. 2544/- per year and by adopting a multiplier of 20 awarded the compensation of Rs. 50,000/-. The deductions were made for the amount of Rs. 16,200/- as pecuniary gain to the appellants in respect of pension which had become payable. The further deduction was made of Rs. 1719/- for lump sum payment, which was assessed at the rate of 5%. The ultimate award of compensation was made in the figure of Rs. 32,661/-. This part of the judgment is correctly assailed by learned counsel for the appellants. The Tribunal has failed to take into consideration the fact that there is positive scope of future advancement in the career of a person, particularly, when he is young and is employed in a Government job. The pay scales are often revised on the basis of the Pay Commission Reports as well as additional allowances are payable. The multiplier of 20 as adopted can also not be justified in the facts of the present case as the deceased would have continued to work till he attained the age of superannuation which is 58 years in the Government service. The data, which has been placed on record, has indicated the salary structure of the constables in Delhi police and it is so stated in the annexure filed with the application for additional evidence that the deceased, in any case, would have been earning a sum of Rs. 2835/- as on January 1, 1994. He would have superannuated in the year 2001. In this background the dependency amount as contribution of the deceased towards his family can easily be assessed at Rs. 1,000/- per month i.e. Rs. 12,000/- per year after taking into account future advancement and other relevant factors. The deceased was a young man of 28 years and the multiplier of 20 on that basis, as adopted by the Tribunal, is rather inadequate. The compensation, however, even on that basis would not be less than Rs. two lakhs, which is claimed by the appellants-claimants in the claim petition. I, Therefore, assess the amount of damages as payable to the appellant-claimants as Rs. two lakhs which can be held to be just and reasonable in the facts and circumstances of the present case. The appellants are also held entitled to interest at the rate of 15 percent per annum from the date of petition before the Tribunal till realisation. The amount, which has already been disbursed to them, shall be taken into account in working out the amount now held payable. Respondents 3 and 6 shall be jointly and severally liable to pay this amount and the finding of the Tribunal that the liability of respondent No. 3 is confined to Rs. 30,000/-- and respondent No.

6 to Rs. 5,000/- is, accordingly, reversed.

10. The appeal is allowed in the above terms with costs, which are quantified at Rs.5,000/-.

11. Order accordingly.