
(2007) 01 DEL CK 0188
In the Delhi High Court
Case No : F.A.O. No. 237 of 1989

Sulochana Marwah and Others

APPELLANT

Vs

Sadhu Ram and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Citation : (2007) 01 DEL CK 0188

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; Y.R. Laroya, for the Respondent

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 20.11. 1977. He was born on 4.1.1943. 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 x 12 = Rs. 15,600. Considering the age of the deceased, multiplier adopted is 30. Total compensation awarded is Rs. 15,600 x 30 = Rs. 4,68,000. The widow has been paid Rs. 1,68,000. The three minor children have been paid Rs. 1,00,000 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. The 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 and income from other sources was Rs. 1,440.05. For the assessment year 1976-77 declared professional income was Rs. 16,630.71. Income from other sources was Rs. 1,034.70. For the assessment year 1977-78 declared professional income was Rs. 23,690.09. Income from other sources was Rs. 4,141.62.

9. Learned Claims Tribunal appears to have been misguided by the return of the assessment year 1978-79 which showed professional income of the deceased at Rs. 19,677.47. The 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 20.11.1977. The assessment year 1978-79 relates to the income of the previous year.

11. 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 per cent.

12. Thus, the second error committed by the Tribunal is not to consider the future prospects. As noted above, the 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, the remaining life expectancy of the deceased as also of the dependants had to be taken note of. The 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 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. Loss of dependency comes to Rs. 28,125 x 20 = Rs. 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 conventional damages of Rs. 15,000 to the family under the said heads. The total compensation, Therefore, works out to Rs. 5,77,500. Under the award compensation assessed is 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 at the rate of 6 per cent 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.