(2003) 10 DEL CK 0086

In the Delhi High Court

Case No : FAO No. 537 of 2001

Sunita Baveja and Others — APPELLANT

Vs

D.T.C. and Another — RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Citation : (2004) 1 ACC 146 : (2004) ACJ 1125 : (2003) 7 AD 591 : (2003) 108 DLT 589

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

Bench : Single Bench

Advocate : O.P. Goyal and Anand Kumar, for the Appellant; Jyotinder Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—The appellant has filed this appeal for enhancement of compensation for the death of one Mr. Suresh Kumar Baveja, husband of appellant No.1 and father of appellants 2 to 4, who had died in a road accident caused by the rash and negligent driving of the bus belonging to respondent No.1 by its driver.

2. The only contention of learned counsel for appellant is that while deciding the loss of dependency to the family of the deceased, the tribunal did not take into consideration the future prospects in the life and career of the deceased and though the deceased was 39 years of age at the time of his death, the tribunal has applied the multiplier of 12 instead of 16, as is provided in the Second Schedule to the Motor Vehicles Act.

3. The appellant was employed as the Section Officer with UPSC and was drawing a total salary of Rs.6,404/- per month as on the date of the accident. Though it is stated by one of the witnesses who had appeared before the tribunal that with the passage of time, the deceased would have been promoted to the post of the Under Secretary and would have been receiving a salary in the grade of

Rs.10,000/- to Rs.15,200/- w.e.f. 20.8.1999, however, it must be remembered that promotion is not a matter of right and depends upon many factors. It is only, Therefore, a presumption that the deceased might have been promoted to the post of the Under Secretary with the passage of time. The deceased was appointed as a Desk Officer in the year 1994. As per the statement of PW-8, normally it takes 8-10 years for a Desk Officer to be promoted as the Under Secretary. Though in a letter exhibit PW-8/1, it is stated that the appellant in normal course may have been promoted as Desk Officer w.e.f. 20.8.1999, however, in terms of the statement of PW-8, he may not have been promoted till the year 2004. Moreover, on the date his statement was recorded, it was admitted by him that no person junior to the deceased had been promoted as Under-Secretary. From the statement of this witness, it is clear that till the year 2004, the deceased may not have been promoted to the post of the Under Secretary. However, these are all mattes of presumptions and assumptions. While deciding a petition for grant of compensation, this Court, no doubt, is required to take into consideration the future prospects in the life and career of the deceased, but it cannot consider as to when the man would have been promoted or whether or not he would have been promoted at all. It all depends upon the service record of the deceased, which was neither perused by the tribunal nor was produced before the Tribunal or before this Court. In any case, it is no longer res-integra that while deciding the loss of dependency to the family of the deceased, the courts and the tribunal are required to take into consideration the future prospects in the life and career of the deceased. The tribunal in the present case has admittedly not taken into consideration the future prospects at the time of assessing loss of dependency to the family of the deceased. The deceased was admittedly in receipt of salary of Rs.6,404/- per month at the time of his death. He was only 39 years of age at the time of the accident. He may have served for 21 more years, if he had been alive. The deceased being in receipt of a stable income and being in the employment of a Government, this Court would thus not be in error in estimating the average income of the deceased at Rs.10,000/- per month.

4. The decease had a large family to support inasmuch as besides him he had a wife, three children and his parents to support in the family considering that there were seven members in the family of the deceased, in my view, the decease may not have been spending more than 1/4th of his income on his personal expenses and the tribunal has, Therefore, erred in deducting 1/3rd from the income of the deceased towards his personal expenses. Deducting 1/4th from the income of the deceased towards his personal expenses, the loss of dependency would come to Rs.7,500/- per month or Rs.90,000/- per year. As already mentioned above, the deceased was 39 years of age at the time of the accident and the correct multiplier, Therefore, to be applied in terms of the Second Schedule to the Motor Vehicles Act is 16. Applying the multiplier of 16, the total loss of dependency to the family would come to Rs.14,40,000/-. Adding to this, another sum of Rs.20,000/- towards non-pecuniary damages by way of

loss of love and affection, loss of estate, funeral expenses, etc., the appellant would be entitled to a total compensation of Rs.14,60,000/-.

5. I, accordingly, allow this appeal, modify the award and direct that the appellants would be entitled to a total compensation of Rs.14,60,000/- from the respondent. The appellants will also be entitled to the interest @ 9% per annum from the date of the filing of the petition before the tribunal till payment. In the facts of this case, however, I leave the parties to bear their own costs.