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SooperKanoon Citation : sooperkanoon.com/358681

Court : Mumbai

Decided On : Oct-10-1986

Reported in : I(1987)ACC399

Judge : M.S. Deshpande, J.

Appellant : Shantabai

Respondent : Karimulla and ors.

Judgement :

M.S. Deshpande, J.

1. This appeal by original plaintiff is directed against the reduction of the claim from Rs. 30,000/- to Rs. 7,000/- only as compensation for the death of her elder son Ashok in an accident which occurred on 22nd October, 1970.

2. It is not necessary to refer to the facts in detail. The appellant's son Ashok, who was about 24 years old on the date of the accident which occurred on 22nd October, 1970, was knocked down by a motor-truck which was being driven by the respondent No. 2 who was in the employment of the respondent No. 1 who was the owner of the truck. The truck was insured with the respondent No. 3. The appellant's contention was that the truck was being driven by the respondent No. 2 in a rash and negligent manner and the death of Ashok was the direct result of that act. Contending that Ashok was earning Rs. 210/- per month and that he would

have provided her at the rate of Rs. 100/- per month, she made a claim for Rs. 30,000/- as compensation. These allegations were denied by the respondent Nos. 1 and 2 and the respondent No. 3 adopted the written-statement of the respondent Nos. 1 and 2.

3. The trial Court found that the death of Ashok was the direct result of the rash and negligent driving of the respondent No. 2 during the course of his employment with the respondent No. 1 and awarded compensation at Rs. 7,000/- on the basis that Ashok was getting not less than Rs. 175/-per month.

4. In this appeal, there is no dispute about the rash and negligent driving of the respondent No. 1 and the controversy is limited only to the amount of compensation which should have been awarded. On the basic facts that Ashok was one of the two sons of the appellant and that he was earning not less than Rs. 175/- per month, and if the life expectancy of Ashok were about 65 years, the appellant, who was 45 years old at the time of the accident would have been provided by Ashok at least for twenty years. The trial Court pointed out that there was no evidence about the health and habits of Ashok and about longevity in the family. There is also no material to show that Ashok was suffering from any disease and no exception can be taken to the trial Court's observation that the expectancy of Ashok's life would be about 60 years. The trial Court did not accept the plaintiff's version that Ashok was spending Rs. 100/- per month on her. However, it is not clear on what basis he reached the conclusion that she was entitled to Rs. 7,000/- as compensation. She had further stated that she was dependent on Ashok who was getting Rs. 300/- per month and her other son at that time was a student. There was no challenge to this position in the cross-examination and there was no reason why the plaintiff's version in the plaint that Ashok was spending about Rs. 100/- per month on her should not have been accepted. The conclusion that she was entitled to only Rs. 7,000/- as lump sum payment reached by the trial Court is not supported by evidence. Considering that she would be legitimately entitled to expect that she would be provided by her son and the monetary equivalent of this provision would be Rs. 100/- per month for a period of twenty years during which she would have been supported, the amount works out to Rs. 24,000/-. Shri Shareef urged that in the course of time Ashok's

earning would have increased and he would have made better provision for his mother. It must be noted that Ashok would have got married and would have been required to provide for his children and, therefore, it would not be legitimate to expect that the provision he would be making for his mother would increase proportionately with his income.

5. Shri Thakur, the learned Counsel for the respondent No. 3, urged that the figure Rs. 7,000/- reached by the trial Court makes a fair provision considering the interest that the amount would fetch. There is no dispute about the fact that the normal bank rate of interest is 10% on fixed deposit per term exceeding three years and in order that the appellant should get Rs. 100/- per month as interest, as lump sum provision of Rs. 12,000/- would be necessary. It is not necessary to take the other deductions, which are normally made into consideration when the amount is being fixed on the basis of the interest the amount would fetch, and in view of this, the figure Rs. 24,000/- on the basis of 20 years' purchase would not be a relevant consideration. I, therefore, find that it would be adequate if the trial Court's finding is modified by substituting the figure Rs. 12,000/- for Rs. 7,000/-.

6. In the result, the appeal is partly allowed. The decree passed by the trial Court is modified, in that, the respondent Nos. 1 to 3 shall pay Rs. 12,000/- to the appellant within two months, less the amount already paid, pursuant to the decree of the trial Court. The appellant will be entitled to the interest on the amount of Rs. 12,000/- which shall be calculated from the date of presentation of the proper application, i.e., from 27-8-1972, at Rs. 4% per annum. The respondents shall pay the costs of this appeal to the appellant and bear their own.