

Ram Singh and ors. Vs. Rajendra Kumar Jain and ors.

Ram Singh and ors. Vs. Rajendra Kumar Jain and ors.

SooperKanoon Citation : sooperkanoon.com/476144

Court : Allahabad

Decided On : Aug-30-1984

Reported in : 1(1985)ACC271

Judge : M. Wahajuddin, J.

Appellant : Ram Singh and ors.

Respondent : Rajendra Kumar Jain and ors.

Judgement :

M. Wahajuddin, J.

1. Smt. Shanti Devi died of accident, which took place on 20-11-1974. A claim petition was preferred by her husband and children for Rs. 20,000/- as compensation. The Claims Tribunal allowed the claim against the respondents 1 and 3 for Rs. 5,000/- with interest at Rs. 6% per annum from 10-5-1975 with proportionate costs directing that the amount shall be payable by the insurance company. The claimants not being satisfied with the quantum of the compensation preferred this appeal.

2. To be brief I may mention that the deceased was not earning any amount and there was no such pleading, nor any averments was made concerning special damages on such score. The law is, however, well settled that even in absence of any claim for special damages, where the victim is non-earning, general damages

are never the less to be awarded for deprivation of the company and association of the victim and loss of such affection which would have been extended. In the very nature of things a strict calculation by any strict measure for general damages and its quantum is not possible. The Supreme Court in the case reported in : [1962]1SCR929 observed that some estimates have to be made and even conjecture is open. It, however, laid down certain data for rational approach. That case was of special damages and data concerned it I am simply relying upon the principles laid down in that case that it is open to make estimate and even a rational conjecture when exact measure of the amount to be fixed is not possible and cannot be available.

3. The learned Counsel for the respondent raised a preliminary objection that the Claim Tribunal has not given a finding that the accident was caused on account of any rashness and negligence of the driver, driving the vehicle. Firstly, on a perusal of the judgment it would be found that though brief a finding has been recorded concerning rashness and negligence. Secondly, so far as the decree for Rs. 5,000/- awarded by the trial court is concerned, it has become final as there is not cross objection or appeal and that decree is based and follows a finding that the driver was rash and negligent and when that is the position the finding concerning that aspect has become final and cannot be re-agitated before this Court in an appeal filed by the claimant.

4. I next pass to consider the quantum of damages. The Tribunal awarded Rs. 5,000/- as damages on the authority of Punjab case reported in AIR 1974 Punjab and Haryana page 51. It is, however, noteworthy that each individual case has to depend upon its own individual facts and circumstances for the quantum of damages. In the Punjab case the claim was made by only three children, meaning thereby that those three individuals were deprived of the company, association, love and affection on account of the death of the victim. In the present case the number of claimants is larger, because the claim has been made by the husband as well as seven children and they all have been deprived of such love and affection and association of the wife and mother respectively. So the Punjab case is distinguishable. It is also noteworthy that at the time of accident the husband was only about 36 years old and most of the children were minors, so the period of

deprivation of the company and association in the present case will be longer. In the case reported in 1975 ACJ 494 cited by the respondents' Counsel itself the general damages awarded on account of deprivation of the company and association of the deceased was Rs. 8,000/-. Considering the number of claimants and the age of the husband of the victim both, it would be reasonable and rational to enhance the amount of compensation awarded to Rs. 8,000/- as general compensation.

5. In the result, the appeal is partly allowed and the amount of compensation awarded by the Tribunal is modified and enhanced to Rs. 8,000/-(Eight thousand) and the interest on that sum would now be payable from the date of order and the rate fixed by the Tribunal. The parties shall bear their own costs of this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com