

Daulta Vs. Ram Swaroop and ors.

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Court : Allahabad

Decided On : May-06-2004

Reported in : I(2006)ACC303

Judge : Jagdish Bhalla and; Rakesh Sharma, JJ.

Appellant : Daulta

Respondent : Ram Swaroop and ors.

Judgement :

Rakesh Sharma, J.

1. Heard learned Counsel for the parties and perused the record.
2. This appeal has been preferred by a widow, Smt. Daulta against an award dated 25.9.2000 passed by Motor Accident Claims Tribunal/VII Additional District Judge, Lucknow in a Claim Petition No. 102/90, Smt. Daulta v. Ram Swaroop and Ors. The Claims Tribunal has awarded Rs. 52,000 plus interest as compensation to the appellant for the death of her own son, Ram Kishore, on 16.11.1989. The appellant is a widow and at the time of filing of claim petition before Motor Accident Claims Tribunal, she was 48 years old. On 16.11.1989 at about 11.00 a.m., her seven years old son, Ram Kishore was hit by a truck No. UAN-9097 owned by opposite party Nos. 1 and 2. The truck was being driven recklessly and negligently and did not blow horn to alert the pedestrians going on the main road. The

deceased, Ram Kishore died on the spot due to accident caused by the truck owned by opposite party Nos. 1 and 2. An F.I.R. was lodged at the police station and the appellant filed a claim petition before the Motor Accident Claims Tribunal for compensation amount of Rs. 3.00 lakhs plus 18% interest on the same. The claim was contested by the opposite parties. Four issues were framed and the matter was concluded on 25.9.2000. Learned Tribunal had granted Rs. 52,000 plus 12% interest as compensation in favour of the appellant. Issue Nos. 1,2 and 3 were decided against the opposite parties. However, while dealing with Issue No. 4 relating to award of compensation, the Tribunal has erred in not granting sufficient and reasonable amount to the appellant to sustain herself and other children in life.

3. We have heard Counsel for the parties and perused the record.

The Tribunal has come to the conclusion that accident had took place due to rash and negligent driving of the truck driver.

4. As far as compensation is concerned, the appellant had submitted before the Tribunal that the appellant was 48 years widow and her child, Ram Kishore was 7 years old and was to be admitted to class II in a primary school. He could have supported his mother and other children of the family after about 11 years on attaining the adulthood. The Tribunal had awarded Rs. 50,000 as minimum amount fixed under the provisions of Section 163-A of the Motor Vehicles Acts (as amended). 12% interest was also allowed on this amount.

5. Learned Counsel for the appellant has placed photocopies of twelve judgments before this Court. Out of these judgments, only two judgments i.e., Divisional Controller, Karnataka State Road Transport Corporation v. Mahadeva Sltetty and Anr. reported in : AIR 2003 SC4172 and Hardeo Kaur and Ors. v. Rajasthan State Road Transport Corporation and Anr. reported in : [1992]2SCR272 , are relevant for the purpose of appreciation for this case. The aforesaid two judgments deal with quantum of compensation.

6. In the present case, the deceased was 7 years old child and her mother aged about 48 years having other children must be pining her hope on the child to grow

up and support the family. It is not the age of deceased alone but the age of claimant as well who is contesting the case before the Tribunal, is the relevant factor. The deceased was 7 years old child. The Tribunal has used multiplier of eight in assessing the compensation.

7. In *Lata Wadhwa and Ors. v. State of Bihar and Ors.* : (2001) IILLJ 1559 SC and *M.S. Grewal and Anr. v. Deep Chand Sood and Ors.* : AIR 2001 SC3660, law on the principles of assessment of compensation was elaborated. In *Lata Wadhwa's* case (supra), the Supreme Court while dealing with the issue in relation to the compensation to be paid in relation to the death of children, placing reliance upon the decision of Lord Atkinson in *Taff Vale Railway Co. v. Jenkins* 1913 AC 1, has ruled that in cases of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectations of pecuniary benefits if the child had lived.

8. The Supreme Court in *M.S. Grewal's* case (supra) has clearly observed that the decision in *Lata Wadhwa's* case (supra) is definitely a guiding factor in the matter of award of compensation wherein children die under an unfortunate accident. The said observation was made after taking into consideration. The conclusions arrived in *Lata Wadhwa's* case (supra) regarding the compensation which was to be paid and the multiplier which was to be applied in relation to the death of a child. The Supreme Court in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Ors.* : AIR 1994 SC1631, held that the proper method of compensation is the multiplier method, and the same view was reiterated in *M.S. Grewal's* case (supra) observing that 'needless to say that the multiplier method stands accepted by this Court in the said decision.'

9. Keeping in view the age of widow, Smt. Daulta, appellant and her children who are dependent on her, the amount of compensation is inadequate. The value of rupees is dwindling due to high rate & inflation. The determination of quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales. The human life is valuable in the present case. A widow has lost

her seven years child and an amount of compensation of Rs. 50,000 and Rs. 2,000 for funeral, the totaling Rs. 52,000 is immensely insufficient. The learned Tribunal has not kept in mind the compensation for loss of expected contribution towards maintenance and sustenance of deceased's mother. The appellant had claimed Rs. 3.00 lakhs plus interest through her claim petition. Break up of this amount was also given in the claim petition. The Tribunal has ignored the submission of the appellant and the compensation awarded is certainly on lower side.

10. We are of the opinion that Rs. 1.00 lakh be awarded to the appellant as lumpsum amount and Rs. 10,000 towards cost of litigation and other expenses for pursuing the litigation in Tribunal and in this Court. We have been informed by the learned Counsel for the appellant that she has already been paid Rs. 52,000.

11. We, therefore, hold that apart from the above amount of Rs. 52,000, the appellant is entitled for Rs. 50,000 more and Rs. 10,000 along with interest at the rate of 9% to be calculated from the date of award dated 25.9.2000 passed by the Motor Accident Claims Tribunal, Lucknow. This amount shall be paid to the appellant within a period of three months from the date of presentation/communication of the award to the opposite parties.

With the above observations and directions the appeal is disposed of finally.