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Court : Punjab and Haryana

Decided On : Jul-07-2000

Reported in : I(2001)ACC589; 2001ACJ1429

Judge : Jawahar Lal Gupta, J.

Appeal No. : F.A.F.O. No. 181 of 1989

Appellant : Bimla Devi and ors.

Respondent : Rajinder Kumar and ors.

Advocate for Def. : Vikas Singh, Adv.

Advocate for Pet/Ap. : Sarjit Singh, Adv.

Disposition : Appeal allowed

Judgement :

Jawahar Lal Gupta, J.

1. On 15.5.1986 Ram Dass was hit by the bus No. CHW 9318 on the crossing of Sectors 11 and 15, Panchkula. On 17.5.1986 he succumbed to his injuries. The widow and the minor children filed a claim petition on 25.1.88. They claimed as compensation an amount of Rs. 1,50,000. The respondents claim that the petition was barred by limitation. The Tribunal found that the claim petition has been filed

'beyond a period of more than one and half years. The petitioners have not shown any sufficient cause for not filing the petition within six months'. Consequently, the petition was held to be time-barred. Aggrieved by the award, the claimants have filed this appeal.

2. Mr. Sarjit Singh, the learned counsel for the appellants, contends that the bar of limitation was wrongly applied by the Tribunal. Learned counsel points out that in view of the law laid down by their Lordships of the Supreme Court in Dhannalal v. D.P. Vijayvargiya, 1996 ACJ 1013 (SC), the claim should not have been declined on the ground of delay. He further submits that the court has also erred in applying a cut of one-third on the income of the deceased. Even if it is assumed that his monthly emoluments were only Rs. 847, he had at least eight dependants. Thus, he could not have spent 1/3rd of his income on himself. At best an amount of Rs. 147 should have been allowed on account of the personal expenses of the deceased. As a result, the counsel submits that compensation of Rs. 1,00,800 should have been assessed and awarded.

3. No one appears on behalf of respondents to contest the appeal despite service.

4. The Tribunal framed the following issues:

(1) Whether the accident on 15.5.1986 in Chowk of Sector Nos. 11 and 15, Panchkula took place due to rash and negligent driving of Rajinder Kumar, respondent No. 1, driver of bus No. CHW 9318? ...OPP

(2) If issue No. 1 is proved, whether the petitioners are entitled to any compensation, if so, from whom and to what amount? ...OPP

(3) Whether the petition is within time?

(4) Relief.

It was found that the accident had occurred due to 'rash and negligent driving of the respondent No. 1, driver of the bus No. CHW 9318'. Under issue No. 2, the monthly salary of the deceased was fixed at Rs. 847. It was further held that the age of the deceased was 58 years. Applying the multiplier of '12', the total

compensation was fixed at Rs. 81,360. It was held that the respondents were liable to pay this amount jointly and severally. Under issue No. 3 the claim was held to be barred by limitation. As a result, the petition was dismissed.

5. In Dhannalal's case, 1996 ACJ 1013 (SC), their Lordships were pleased to hold as under:.A claim petition filed after 14.11.94, cannot be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when Sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section 166 w.e.f. 14.11.1994. When Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force. Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die. The deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court.

In view of the above, it is clear that the appellant's claim could not have been rejected on the ground of limitation. As a result, the findings on issue No. 3 cannot be sustained.

6. Still further, Mr. Sarjit Singh appears to be right in his submission that in view of the size of the family, the deceased could not have been using one-third of the income for himself alone.

7. In the circumstances, it would be reasonable to assume that the deceased was contributing at least Rs. 700 towards the family. On that basis, his annual

contribution to the claimants would come to Rs. 8,400. By applying the multiplier of '12', as already fixed by the Tribunal, the amount of compensation due to the appellants shall work out to Rs. 1,00,800. They would also be entitled to interest at the rate of 12 per cent per annum.

8. The appeal is allowed in the above terms.

9. Since no one has appeared on behalf of the respondents, there shall be no orders as to costs.

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