**Smt. Raj Rani and Others Vs. Banwari Lal and Others**

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**SooperKanoon Citation** : sooperkanoon.com/679828

**Court** : Delhi

**Decided On :** Jul-04-1995

**Reported in** : II(1995)ACC364; 1996ACJ175

**Judge** : C.M. Nayar, J.

**Acts** : Motor Vehicles Act, 1939 - Sections 110A

**Appeal No.** : F.A.O. No. 266/97

**Appellant** : Smt. Raj Rani and Others

**Respondent** : Banwari Lal and Others

**Advocate for Def.** : B.R. Sabbarwal, ; Deepak Sabbarwal and ; Y.D. Nagar, Ad

**Advocate for Pet/Ap.** : O.P. Goyal, Adv

**Judgement** :
ORDER

**C. M. Navar, J.**

1. The present appeal is directed against the award dated August 27, 1979 of Shri Mahendra Pal, Judge Motor Accident Claims Tribunal, Delhi. The appellants had filed claim petition for award of compensation of Rs. one lakh under Section 110A of the Motor Vehicles Act for the death of Daya Kishan Dass in an accident which

took place on March 18, 1971 at about 5 p.m. near Maurice Nagar Crossing in front of Ramjas College, within the jurisdiction of P. S. Roshanara Road. The appellants are the widow, three children (minor at the time of accident) and mother of the deceased.

2. The brief facts of the case are that the deceased was going on cycle from the side of Roop Nagar towards Old Secretariat via Maurice Nagar and was on his correct left side of the road. The offending truck bearing No. DLL-3761 driven by respondent No. 1 came from behind and knocked down the deceased causing serious injuries. The deceased was removed from the site of occurrence in unconscious state to Irwin Hospital but he died on the way. It is alleged in the petition that the truck was driven in a rash and negligent manner by respondent No. 1. The deceased was aged 31 years. He was enjoying good health and was the only source of livelihood of the family. The family, it is stated, had been rendered completely destitute on account of untimely death of the deceased Daya Kishan Dass. There has been history of longevity in the family and taking into consideration the health of the deceased, he would have continued to live up to the age of 80 years but for this unfortunate accident. He was employed as a teacher and was very energetic and hard working and in all probability he would have risen to better position in life in the course of time as he had a very promising and brilliant academic career. The total claim for compensation was made for Rs. one lakh only with interest from the date of accident till the date of payment. The offending vehicle was driven by respondent No. 1 in the course of his employment with respondent No. 2 who was the owner. The vehicle was insured by respondent No. 3 and claim was filed against the said respondent for joint and several liability.

3. The written statement was filed by the respondents and usual pleas were taken that there was no negligence on the part of the driver. The Insurance Company, respondent No. 3 herein, also filed its written statement and took the plea that the driver, respondent No. 1 was not driving the truck with authority and permission of the insured, respondent No. 2. The maximum liability of the insurance company is limited to the extent of Rs. 50,000/-. On merits, the status of the appellants as legal representatives of the deceased was challenged.

4. On the pleadings of the parties, the following issues were framed :

1. Whether Shri Daya Kishan Dass Garg sustained fatal injuries due to rash and negligent driving of truck No. DLL-8761 on the part of respondent No. 1, as alleged?

2. Whether the petitioners are the legal representatives of the deceased ?

3. To what amount of compensation, if any, are the petitioners entitled and from whom?

4. Relief.

5. The Tribunal disposed of issue No. 1 holding that 'there is no escape from the irresistible finding that the accident in question was direct off-spring of rash and negligent act of driving of truck No. DLL-8761 on the part of respondent No. 1'. Issue No. 2 was also decided in favor of the appellants and they were held to be the legal representatives of the deceased. The question of quantum of compensation and liability of the respondents was considered in issue No. 3. The learnedJudge accepted that the age of the deceased was about 31 years on the date of death. The total income was Rs. 384.18. The assertion of the appellants that the deceased was earning between Rs. 800/- to Rs.900/- per month besides his usual income as he was a teacher, was not held to be supported by any evidence. The pecuniary dependency of the deceased was assessed at Rs. 275/- per month and considering the age of the deceased, it was considered fit to adopt the multiplier of 22. The dependency of Rs.3,300/- per annum was adopted and by using the multiplier of 22, the total compensation was assessed at Rs.72,600/-. The deduction of 25% on account of lump sum payment and uncertainty of life was made and the compensation was reduced to Rs. 58,080/-. The Tribunal then upheld the contention of respondent No. 3 and held its liability limited to the extent of Rs. 50,000/-only.

6. The learned counsel for the appellants has impugned the award on two grounds, Firstly, it is contended that the claim of Rs. 1 lakh as made in the claim petition by the appellants was just, fair and reasonable and the tribunal had no

jurisdiction to reject the same and award a lesser compensation. Secondly, it is argued that the policy of insurance has not been proved and it cannot be held on the basis of evidence on record that the liability of the insurance company was only to the extent of Rs. 50,000/-.

7. The learned counsel for the respondents, on the other hand, has contended that the award of compensation is adequate and no interference is called for in the present appeal. He has further reiterated that the finding of the Tribunal with regard to the limited liability cannot be assailed as no serious challenge was made to the averment of the respondent-Insurance Company in the written statement which was filed before the Tribunal.

8. To recapitulate, it may be stated that the admitted facts are that the deceased was 31 years of age at the time of his death on March 18, 1971. He was employed as a teacher and has left behind his widow, three minor children and mother. The salary of the teachers during the past few years hasundergone changes and the conditions of service have also been improved as a result of Pay Commission Reports and various allowances which have since been added to the income of the teachers, as it has been done for other categories of employees.

9. Mr. Sabbharwal, learned counsel for respondent No. 3, has placed strong reliance on the judgment of the Supreme Court as reported in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, : AIR 1994 SC1631 . The facts of this case will indicate that the deceased was 39 years of age. His income was Rs. 1,032/- per month. The future prospects of Advancement in life and career was taken into account and his income was assessed at a higher figure of Rs. 2,000/- per month. The loss of dependency was assessed at about Rs. 1,400/- per month i.e. Rs. 17,000/- per year after deducting 1/3rd of the gross income towards the personal expenses of the deceased. The multiplier of 12 was adopted and the compensation on that basis was assessed. In the present case, the deceased was 31 years of age and in case the same formula is adopted i.e., the income is doubled and the multiplier which is relevant to the age of the deceased is adopted, the compensation will not be less that the amount, which has been claimed in the claim petition. The income of the deceased in the present

case can be assessed at Rs. 800/- per month and after allowing the deduction of his personal expenses it can be safely inferred that the loss of dependency would not work out to be less than Rs. 7,000/- per annum. The deceased was 31 years of age in the present case, whereas, in the case cited above, the deceased was 39 years of age and on that basis the reasonable multiplier, which can be adopted in this case would not be less than 15. The compensation on that basis, thereforee, will not be less than the amount of Rs. one lakh which has been claimed in the claim petition. The other methods which have also been adopted by the Supreme Court for using a higher multiplier are referred to in the judgments as reported in Hardeo Kaur v. Rajasthan State Road Transport Corporation, : [1992]2SCR272 where a multiplier of 24 was adopted when thedeceased was aged 36 years and in Urmila Pandey v. Khalil Ahmed, : [1994]3SCR1001 where it was held that the life expectancy could not be less than 65 years and on that basis the award of compensation was enhanced. The deceased in the present case was a teacher and it can also be assumed that he would have continued to provide financial support to the family till he reached the age of superannuation, which is fixed at 60 years at the present juncture or even later on the basis of qualification and experience as there is no dearth of teaching assignments for good teachers. Taking an overall view of the facts and circumstances of the present case and on the basis of law as laid down by the Supreme Court, the claim of compensation of Rs. one lakh by the appellants cannot, in any manner, be held to be exaggerated. The Tribunal has further erred in reducing the amount by 20% on account of lump sum payment which is no longer a valid deduction on the basis of settled law as stated in the judgment of Hardeo Kaur (supra).

10. The next question which requires to be considered is as to whether the Tribunal was justified in holding that the liability of the Insurance Company respondent No. 3 herein is limited only to the extent of 50%. The learned judge has not dealt with evidence on record and has barely stated in the concluding part of the judgment 'that the liability of the Insurance Company is however to the extent of Rs. 50,000/- only', the evidence of R. W. 1 Manmohan Dam may be referred to which 'reads as follows :

'I have brought a copy of policy No. 456691019 Valid from 27-2-1971 to 26-2-1972 issued to M/s. Bharat Road Lines C/o M/s. Haryana Finance Pvt. Ltd., Roshanara Road, Delhi covering comprehensive risk of Truck No. DLL8761. It was a public carrier. Its certified copy (objected to) is Ex. RW1/A. xxxxxx Original policy had been issued. This copy Ex. RW1/A is not the carbon copy of the original,'

I have also perused the carbon copy of the original which is filed as Ex. RW1/A. The evidence on record, thereforee, indicates that neither the original nor the carbon copy wasproduced. There is, thereforee, no justification to hold that the liability of respondent No. 3 is limited to the extent of Rs. 50,000/-. In this background, it is not possible to sustain the finding of the Tribunal which is reversed.

11. For the aforesaid reasons, this appeal is allowed. The compensation to the appellants is assessed to Rs. 1 lakh, as claimed in the petition. The appellants shall also be entitled to interest at the rate of 15 per cent per annum from the date of filing the petition till realisation. The amount, which has since been paid as a result of the award of the Tribunal, shall be taken into account in working out the amount which is now held payable. The appellants shall also be entitled to costs of this appeal which are quantified at Rs. 5,000/-.

12. Appeal allowed.