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Court : Delhi

Decided On : May-15-1967

Reported in : 4(1968)DLT46

Judge : M.M. Ismail, J.

Appeal No. : First Appeal No. 155D of 1964

Appellant : Naraln Devi

Respondent : Dev Raj and ors.

Advocate for Pet/Ap. : R.N. Tikku, Adv

Judgement :

M.M. Ismail, J.

(1) This appeal arises from an order of the Motor Accidents Claims Tribunal, Delhi, dated 29th April, 1964. The short facts necessary for this purpose are that a son of the appellant herein, one Jagdish Kumar, was standing behind truck No. Png 1861 in Naya Bazar near Suri Goods Transport Company, Delhi, on 22th July, 1960 at 7-5U P. M. when truck No. Dlg 3749 driven by respondent No. 1 in the course of his employment with respondent No. 2, the owner of the truck, while reversing, dashed into truck No. Png 1861 and crushed Jagdish Kumar who was standing behind it. Jagdish Kumar sustained injuries and succumbed to them in Irwin

Hospital where he was taken. The present appellant filed a claim for compensation of Rs. 50,000.00 from the respondents alleging that the accident resulting into the death of Jagdish Kumar was caused due to rash and negligent driving of respondent No. 1, who, while reversing his truck, did not take care to see that the road on the back was clear. Respondent No. 3 in the application was the insurer of the truck concerned.

(2) The claim of the appellant was resisted by the respondents on several grounds - On the basis of those objections, the Motor Accidents Claims Tribunal framed the following six issues :-

1. Whether there is sufficient cause and condensation of delay in filing the claim 2 Whether the applicant is the legal representative of Jagdish Kumar 3. Whether the accident, where in Jagdish Kumar had died, was the result of negligent driving of the truck by Dev Raj 4. Whether Jagdish Kumar was traveling in the truck at the time of the accident If so, what is its effect 5. To what amount of compensation the applicant is entitled and from whom 6. Relief.

(3) Issue No. 1 was decided by the Tribunal in favor of the appellant herein by a separate order dated 27th July, 1963. The Tribunal decided issue No. 2 in favor of the present appellant herein. On issue No. 3 the Tribunal held that the accident resulting into the death of the deceased was caused due to negligent driving of Dev Raj respondent who did not have the proper look out on the road while reversing his truck without the aid of any person giving him signal to move on, Issue No. 4 was decided against the respondents on the ground that there was no evidence led on that issue. Under issue No. 5, the Tribunal awarded a sum of Rs. 19,000.00 with costs to the appellant herein. It is against this quantum of compensation awarded by the Tribunal that the present appellant has preferred this appeal to this Court.

(4) Before proceeding with the matter, I must point out one circumstance. The case was on my list and, was taken up on 12th May 1967 in the forenoon when the appellant's counsel was present and the counsel for the respondents was not present. I waited for some time and even then nobody on behalf of the respondents appeared before me and made any representation. I heard the

counsel for the appellant and after he concluded his arguments I, adjourned the case awaiting the appearance of the respondents in the afternoon. Even then none appeared on behalf of the respondents. Then I directed the case to be included in the list for today marking it part heard, Even today till 10-45 A. M. nobody on behalf of the respondents has appeared before me. Under these circumstances, I have no alternative but to decide the matter on the basis of the submissions made by the learned counsel for the appellant and on going through the record available before me.

(5) The basis on which the Tribunal awarded the compensation of Rs. 1950 is as follows: The Tribunal took the age of the deceased as 30 years and his annual income as Rs. 6,250.) according to the income-tax assessment order:' The Tribunal considered that the deceased must have left considerable assets, the extent of which was not known on the records, and in the absence of the evidence of the appellant inheriting any assets of the deceased by the death, no deductions could be made as a gain to her from the loss which she had suffered on account of the death. The Tribunal further recorded that the deceased possessed good health and did not drink and smoke, he was having good income; he was unmarried at the age of 30 and must have been married in a year or so. The Tribunal further pointed out that the appellant herein had been supported by all the four brothers after the death of their father and she was an old lady in ill health, of 62 years, and might not survive for more than five years. The Tribunal concluded that as all the four brothers supported the appellant herein, the loss by the death of the deceased as his contribution to her, could not, in any case, be more than Rs.35 a month, all the four brothers contributing about Rs.149 to her on this basis calculating. for five years, the Tribunal arrived at the loss to the appellant by the death of the deceased to be Rs. 2,100. The Tribunal pointed out that in arriving at this figure he had taken into consideration the very short period for which the appellant herein was expected to live. H- further observed that as the appellant would have derived the benefit of Rs. 2,100 from the deceased on a period spread over five years, while she would be getting the excretal amount in lump sum immediately, the proper award to be made to her should be Rs. 1950.

(6) The learned counsel for the appellant questioned before me not only the correctness of the estimate made by the Tribunal but also the materials on the basis of which the Tribunal purported to arrive at the conclusion which it did. The learned counsel pointed out that according to the evidence of A.W. 6, the age of the deceased was 26 years only and A.W. 6 had said that the deceased alone was supporting the appellant. therefore, the learned counsel for the appellant contended that the conclusion of the Tribunal that all the four brothers supported the mother and they contributed Rs. 140 per month to her, and the share which was contributed by the deceased, therefore came to Rs. 35 per month, was neither correct nor supported by evidence. The learned counsel further challenged the estimate of the Tribunal that the appellant is an old lady of 62 years' and may not survive for more than five years. A.W. 6 the eldest son of the appellant, had stated as follows:-

'It is correct that mother is dependent on all the three brothers. It is correct that we have been supporting our mother after the death of our father. Our father died in 1957. The deceased was supporting my mother since 1937 up to the time of his death which took place in 1960.'

The above sentences will show that there is no incontrovertible evidence from A.W. 6 that it was the deceased who was alone supporting the mother. Though in one sentence he had stated that the deceased was supporting his mother since 1957 up to the time of his death which took place in 1960, in the immediately preceding sentences he had stated that the mother was dependent on all the three brothers and that they had been supporting their mother after the death of their father. Under these circumstances, I am not able to accept the contention of the learned counsel for the appellant that it was the deceased alone who was supporting the mother and not the other brothers. On the other hand, there is no evidence to show that all the four brothers contributed only a sum of Rs. 140.00 to the mother for her maintenance and support. One significant and important circumstance that may be noted in this context is that the deceased was unmarried while the other three brothers were married and had their separate families. In view of this, the share which the deceased contributed towards the maintenance of his mother might be much larger than the shares which might

have been contributed by the other three brothers, even though the subsequent marriage of the deceased, if he had been alive, might have reduced his share for the support of his mother because of the necessity to support his own family. In any event, the Tribunal had proceeded on the basis that the deceased had an annual income of Rs. 6,250/ , even though he did not accept the mother's statement of the brother that the deceased's income would be about Rs. 12,000.00 to Rs. 13,000.00 per year. Even assuming that the deceased's income was Rs 6,250/ per year, it will work out to more than Rs. 500.00 per month. Taking into consideration the normal circumstance that the business which the young man carried on would have flourished, his monthly income in future would have gone up and taking into account the age of the mother and the cost of living, his contribution towards the maintenance of his mother would have been substantial and certainly- could not have been at the rate of Rs. 35.00 per month. The second aspect that has to be considered is that the Tribunal had estimated that she might not survive for more than five years. Two features might be noted in this behalf. The one is that though the deceased met with the accident and died in 1960, the evidence was taken in 1963. It was at that time that the age of the mother was given as 62 years, with the result that on the date of the accident the age of the mother would have been 59 years. The second aspect that has to be taken note of is that though the Tribunal estimated that the mother would survive only for five years and awarded compensation on that basis in 1964, he forgot to take note of the fact that prior to the award, for the period of four years, subsequent to the death of the deceased, the mother had been living and was healthy, and though the Tribunal estimated the possible period of survival of the mother as five years, even today in 1967 she is alive and healthy and is present in Court. On this basis, the learned counsel for the appellant contended that the estimate of five years' survival was grossly inadequate and the Tribunal had not taken into account the longevity of the people of this country. which they enjoyed. In this connection, he referred to the decisions in *Shrimati Mangli and other v. The Krishna Bus Service Ltd, Delhi*, *Gomathi Ammal v. Ramachandran Pillai*, and *Union of India and another v. Viranwali* and contended that it must be estimated that the appellant would live up to the age of 75 years and on that basis the amount of compensation payable to her should be estimated.

(7) All the three decisions, referred to above, refer in detail to the general principles that may be taken into consideration in estimating the amount of compensation that may be payable in such cases and it is unnecessary if or me to refer to them in detail in view of the discussion found in those authorities, with which I respectfully agree. However, in any event, Hi all these matters nto only the quantum of compensation payable, bat also the period for which a person is expected to live, are also to be considered, and all that can be said is that the Court must take ntoe of the existing circumstances, nto only with regard to the economic conditions of the people of the country but also their social standard of living. Apart from that, the figures in such matters must necessarily be somewhat arbitrary, which, in no sense, can be completely avoided. Taking all the circumstances into account, namely, the fact that the deceased was a young man of 26 years having a decent income with the possibility of earning more, and the appellant is also healthy, I am of the view that it will meet the requirements of the case if the compensation is estimated at the rate of Rs. 100.00 per month for a period of 12 years from the date when the accident took place. If it is so calculated, the amount will come to Rs. 14.400.00 and I arrive at a round figure of Rs. 15,000/. being the compensation payable to the appellant. The Tribunal deducted some amount by way of interest, but, at the same time, he forgto that the appellant had been deprived of the amount for all these years and in that way any possibility of the interest gained one way will be neutralised by the interest for the period she was actually deprived of the amount which she would have received from the son. thereforee, without making any deduction, I fix the compensation payable at Rs. 15,000.00 by the respondents to the appellant. Accordingly, this appeal is allowed to this extent with costs,

(8) In paragraph 9 of the written-statement filed by the third respondent the third respondent had stated that the maximum liability of that respondent under the policy was only Rs. 20.000.00. thereforee just as the Tribunal had passed the order, I also direct that the entire compensation amount shall be paid by the insurer, the third respondent.