

Santosh Kumari and ors. Vs. Mohammad Arshad Khan and ors.

Santosh Kumari and ors. Vs. Mohammad Arshad Khan and ors.

SooperKanoon Citation : sooperkanoon.com/692368

Court : Delhi

Decided On : Jul-03-1989

Reported in : ILR1989Delhi81

Judge : Malik Sharief Ud Din, J.

Appeal No. : First Appeal No. 1 of 1978

Appellant : Santosh Kumari and ors.

Respondent : Mohammad Arshad Khan and ors.

Advocate for Pet/Ap. : P.K. Seth and; Ashok Popli, Advs

Judgement :

Malik, J.

(1) The appellants have impugned the award of 10th of August 1977 by the Motor Accident Claims Tribunal awarding a sum of Rs. 17,500 to the appellants. The appellants' grievance is that the learned Tribunal has fallen into an error in calculating the amount and on a proper assessment of the facts and circumstances the amount ought to have been to the tune of Rs. 43,260.

(2) Before I advert to the contentions raised by the learned counsel for the parties, it is necessary to record certain facts. The deceased is one Mr. S.K. Sharma son of Shri Ratti Ram who was involved in an accident on 16th of September 1969 at

about 2 p.m. at Jamuna bridge. The offending bus No. Dlp 3709 was being driven by respondent No. 2 who at the relevant time was the driver of the bus. Respondent No. 1 the owner of the bus and respondent No. 3 the insurance company have also been made parties. The cause of accident was rash and negligent driving by the driver of the bus.

(3) The respondents have not made any grievance against the findings arrived at by the Tribunal. They have accepted the findings of the Tribunal that the deceased Shri S. K. Sharma was killed in the accident by the offending vehicle which was being driven by respondent No. 2 and that this accident was caused due to rash and negligent driving of respondent No. 2. The relevant issue, therefore, for our purpose is issue No. 9 regarding the amount of compensation due to the appellants. It is not disputed that at the time of the accident the deceased had a dependent wife and 3 children. Mr. Seth learned Counsel for the appellants, has, in my view, rightly pointed out that the finding of the Tribunal in respect of the monthly dependency of the appellants is not only based on surmises but apparently appears to be wrong. The monthly dependency, may of Rs. 200 has been arrived at by the learned Tribunal in the belief that being an employee in the Air Force the deceased must have been a man of extravagant habits. It was in that belief that the Tribunal came to the conclusion that the deceased must have been spending a sum of Rs. 250 on his person out of Rs. 450 which he was drawing as salary at the relevant time. According to Mr. Seth this finding of the Tribunal is based on no evidence & is most unreasonable. There is no evidence to indicate that the deceased was a man of extravagant habits. Normally, he is to be treated as a gentleman. Considering the fact that he had to maintain his wife and three children, in my view, Mr. Seth's contention that the dependency must have been to the tune of Rs. 350 per month seems to be correct. It is, therefore, in the light of this fact that the amount of compensation will have to be determined. I am aware that there is no evidence to arrive at such a conclusion but, to me, this appears to be the only reasonable conclusion. The learned Tribunal has further erred in holding that the loss for 8 years would be to the tune of Rs. 80 per month. In fact, the pension at the rate of Rs. 120 per month was drawn by the widow only for 7 years. Deducting the amount of Rs. 120 from the dependency of Rs. 350, the compensation awardable to the appellant from 17th of September 1969 to 16th of

September 1976 at the rate of Rs 230 per month would be Rs. 19,320, and for the remaining 8 years at the rate of Rs. 290 per month after deducting the amount of pension at the rate of Rs. 60 per month from the dependency would be Rs. 27,840. The total amount of compensation to which the appellants are entitled would be Rs. 47,160 and after deducting an amount of Rs. 3900 on account of gratuity received by the appellants, the net amount of compensation to which the appellants are entitled would be Rs. 43,260.

(4) For the reasons stated above, the appeal is allowed and it is directed that the appellants are entitled to recover a sum of Rs. 43,260 on account of compensation instead of Rs. 17,500 decreed by the Tribunal. I am told that a sum of Rs. 17,500 has already been paid to the appellants leaving a balance to Rs. 25,760. It is directed that the balance amount of Rs. 25,760 shall be paid to the appellants or shall be deposited in the court below within a period of two months failing which the appellants shall be entitled to future interest at the rate of 6 per cent per annum from the date of this order. The respondents shall be jointly and severally responsible for the payment of the amount. The appellants shall also be entitled to the costs of the litigation. July 3, 1989.