

**Maya Seth and ors. Vs. Balram and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/696068](http://sooperkanoon.com/696068)

**Court :** Delhi

**Decided On :** Jul-09-1985

**Reported in :** 2(1985)ACC405

**Judge :** S.B. Wad, J.

**Appellant :** Maya Seth and ors.

**Respondent :** Balram and ors.

**Judgement :**

**S.B. Wad, J.**

1. FAO 102/73 is filed by the heirs of the deceased ChuniLal Seth for enhancement of compensation. F.A.O. 138/73 is filed by the Union of India challenging the award itself. The award was rendered by Motor Accidents claims Tribunal, Delhi on February 22, 1973. The Tribunal awarded Rs. 17,738/- as compensation. The claims ants have claimed Rs. 99,000/- as compensation.

2. The accident took place on July 31, 1966 at 5.00 PM near Khyber Pass Market, Alipur Road, Delhi. Chuni Lal Seth was going from Timarpur side to Kashmere Gate on his Scooter No. DLW 1516. His son Prem Chand was sitting on the pillion. Vehicle No. DLJ 3047, a Police Van, coming from the opposite direction suddenly took a right turn and dashed against the scooter. Chuni Lal was seriously injured and was taken to the Irwin Hospital for treatment. He died of injuries on August 8,

1966. The Union of India denied their liability. They claimed that the scooter was being driven recklessly on the wrong side of the road and when vehicle No. DLJ 3047 was taking a right turn the scooter which was in great speed struck the vehicle. The Union of India also claimed sovereign immunity.

3. The Tribunal has mainly relied upon evidence of Prem Chand P.W. 5, the son of the deceased. He has given a graphic description as to how the accident took place. He had stated that the scooter was going on the left side of the road at a slow speed near the crossing when the Police van coming from the opposite direction took a sudden turn to the right without giving any signal or horn and hit the scooter. The version of Prem Chand is fully corroborated by the site plan and the inspection report, of the vehicles. The site plan is exhibited as P.W. 3/1. The police Inspection Report of the vehicles is exhibited as P.W. 4/1. The site plan showed that at the place of accident the road was about 50 ft. wide and the rear portion of the police van was 25 ft. from the edge of the road. The scooter was lying on the left side of the wagon near the left rear wheel. The inspection report of the vehicle disclosed that there was a dent on the left side of the police vehicle, dents in the front mudguard, dent in the headlight ring and scratches on the left side cover of the scooter. The front mudguard rod of the scooter was dismantled. On the other hand, the Tribunal found that Union of India had not taken any definite stand in the written statement as to whether the police vehicle gave any signal or horn before turning to the right. It was not specifically denied in their written statement that the police vehicle took a sudden turn at the place of the accident. The Tribunal further noted that Balren R.W. 4 had admitted in his cross-examination that he had seen the scooter from a distance of about 30/40 yards ahead. The Tribunal, therefore, rightly came to the conclusion that it was the duty of the police van to ensure safety of the on-coming traffic. On the admissions of the evidence of the respondents before him, the Tribunal further found that the police van had not slowed down on the turning and it was taking a turn at a speed of 25/30 Kms. The witnesses for the respondents before the Tribunal had stated Prem Chand and his father, who were coming on the scooter, were talking to each other at the time the accident took place. The Tribunal has rightly pointed out that no such defense was specifically taken in the written statement. The Tribunal further found that no evidence of contributory negligence was produced by the respondents before the

Tribunal. On this assessment of the evidence, the Tribunal came to the conclusion that the accident was caused by rash and negligent driving by the police van resulting into death of Chuni Lal Seth.

4. The counsel for the parties took me through the evidence. The counsel for the Union of India was unable to explain why the important elements of their defense were not specifically averred in the written statement. On reading the evidence of Prem Chand who was the most natural witness, I find that his evidence is quite reliable. The site plan and the inspection report of the vehicles fully corroborate his version of the accident. I, therefore hold that the accident was caused by the rash and negligent driving of Police van No. DLJ 3047.

5. I may here dispose of another submission of the Union of India. The Union of India has claimed sovereign immunity. The Tribunal has pointed out that at the time of the accident the police vehicle was employed for distribution of seedlings for the Intensive Development of Agricultural programme and was working for the Agricultural Department. The Tribunal has correctly applied the test to decide whether this function was a sovereign function or not. Every activity of a sovereign is not entitled to immunity from legal liability. The law on this point has been clearly enunciated by the Supreme Court and the Privy Council. Distribution of seedlings by no stretch of imagination can be treated as a sovereign function. The Tribunal has, therefore, rightly rejected the claims for sovereign immunity. There is no merit in the appeal of the Union of India and the same is dismissed.

6. The appeal of the claims for enhancement of compensation has to be considered in the light of the age of the deceased, his income at the time of the accident and his future income, the life expectancy of the deceased, the social status of the deceased apart from his employment and the number of people who were dependent for their livelihood and welfare on the deceased. The deceased was 43 years old at the time of accident. He was employed as a Superintendent in the Directorate of Transport, Delhi Administration. His monthly salary at the time of the accident was Rs. 352/-. He was the sole bread earner of the family. He was an active athlete and was the Secretary of the Delhi Hockey Association. He was an international unripe Grade 1 and was nominated to go to Japan as the Manager of

the Indian Hocked team for exhibition matches. He enjoyed good health and robust Physique. Confidential reports for two years prior to the accident were produced by the Directorate of Transport. They show outstanding reports. It was stated that he was the only officer with clear knowledge of the Delhi Transport policy. His knowledge of motor vehicles act was profound he was a very dependable officer. For two years he was found fit for accelerated promotion. From these confidential reports it is clear that the assertion of the claimants that the deceased was likely to be promoted as Administrative Officer in the Directorate of Transport was well founded.

7. The salary of the deceased at the time of his death was Rs. 352/- per month but he was supporting a family of 9 persons which included his wife and 7 children. It was an error on the part of the Tribunal to assume that a person with such family responsibilities would spend 1/3rd amount on his personal expenses. It will be reasonable to expect that he would not be spending more than Rs. 30/- on himself, i.e. 1/6th of the income. The deceased was only 43 years of age at the time of the accident. Considering his health as an athlete as also the general life expectancy, it can certainly be assumed that he would have lived up to the age of 65. It is also reasonable to assume that after his retirement he would have earned as much on his sport activities. I, therefore, hold that the compensation has to be worked on the basis of Rs. 300/- per month with the multiplier of 22. The claimants are thus entitled to Rs. 79,200/- as compensation towards general damages. It may appear to be on the low side considering the fact that he was already adjudged fit for accelerated promotion. Since no promotion had actually taken place, I am not inclined to add any amount on that basis. The Tribunal has awarded a sum of Rs. 3,000/- for pain and suffering. I would not like to disturb that amount. The claimants are, therefore, entitled to a sum of Rs. 82,200/-. The Tribunal has erroneously deducted insurance amount of Rs. 5,000/-, provident fund amount of Rs. 1,114/- and the national pension of Rs. 19,440/- from the deductions. These deductions are impermissible in law. The high inflation resulting into very low value of the real worth of rupee, no deductions are now permitted on account of lump sum payment. The claimants are also entitled to 6 per cent simple interest from May, till payment.

8. F.A.O. 102/73 is allowed with costs.

9. F.A.O. 138/73 is dismissed.

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