

Tej Pal Singh Yadav and ors. Vs. Rajasthan State Road Transport Corporation and anr.

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SooperKanoon Citation : sooperkanoon.com/697297

Court : Delhi

Decided On : Jul-28-2003

Reported in : III(2003)ACC140; 2003VIAD(Delhi)474; 106(2003)DLT325; 2003(70)DRJ410

Judge : S.K. Mahajan, J.

Appeal No. : FAO Nos. 7 and 8/2000

Appellant : Tej Pal Singh Yadav and ors.

Respondent : Rajasthan State Road Transport Corporation and anr.

Advocate for Def. : NEMO

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

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. This order will dispose of both the above appeals filed by the father and brothers of the deceased for enhancement of compensation for the deaths of Jai Pal Singh Yadav and his wife Mrs. Sheetala Yadav, both of whom died in a road accident due to the rash and negligent driving of the bus owned by respondent no.1. Despite service, no one has appeared on behalf of the respondents and I have, therefore, proceeded to decide these appeals ex-parte. A few facts relevant for deciding these appeals are:-

2. The deceased Jai Pal Singh on July 5, 1988 was going on a two wheeler scooter from Delhi to Ghaziabad and his wife was sitting on the pillion seat; that when the scooter was crossing the New Rohtak Road and Faiz Road crossing adjacent to Telephone Exchange, the scooter was stated to have been hit by the bus, owned by respondent no.1 and driven by respondent no.2. The bus was allegedly being driven rashly, recklessly and negligently by its driver. As a result of the accident the scooter was dragged to a distance of almost 90 feet from the crossing. Both Jai Pal Singh as well as his wife were run over by the bus and have stated to have died at the spot. The deceased Jai Pal Singh was 34 years of age at the time of his death and was employed with the Ghaziabad Development Authority as an Asstt. Engineer and was getting a salary of about Rs.2200/- per month. The deceased Sheetala Devi was a housewife and was 32 years of age. Claiming that the accident was caused entirely due to the rash and negligent driving of the bus by respondent no.2, the parents of Jai Pal Singh filed two claim petitions claiming compensation for the death of their son as well as daughter in law. The mother of Jai Pal Singh died during the pendency of the claim petition and she was substituted by her sons as claimants before the Tribunal.

3. The respondents in the written statement did not deny that accident had taken place on that fateful day, however, they denied that the accident was caused due to the rash and negligent driving of the bus by its

driver. The plea taken by the respondents in the written statement was that the accident was caused due to the rash and negligent driving of the two wheeler scooter by the deceased Jai Pal Singh. It was submitted that the scooter at a high speed came from the side of Deshbandhu Gupta Road and all of a sudden came in front of the bus and despite respondent no.2 applying brakes, the accident was caused as the bus collided with the scooter. It was, therefore, claimed in the written statement that the respondent was not liable to pay compensation to the claimants. In the claim petition filed for compensation for the death of Jai Pal Singh, the Tribunal framed the following issues :-

- '1 . Whether Jai Pal Singh Yadav died on road side accident due to rash and negligent driving of bus bearing No.RNP-1606 being driven by respondent no.2?
2. Whether the petition is bad for mis-joinder or non-joinder of necessary parties?
3. To what amount of compensation the petitioners are entitled and from whom?
4. Relief.'

4. In the claim petition filed for compensation for the death of Mrs.Sheetala Yadav, the Tribunal framed the following issues:-

- '1 . Whether Sheetala Yadav died on road side accident due to rash and negligent driving of bus bearing No.RNP-1606 being driven by respondent no.2?
2. Whether the petition is bad for mis-joinder or non- joinder of necessary parties?
3. To what amount of compensation the petitioners are entitled and from whom?
4. Relief.'

5. While deciding Issue No.1, the Tribunal held that the accident was caused entirely due to the rash and negligent driving of the bus by its driver. Issue no. 2 was also decided in favor of the appellants and it was held by the Tribunal, that the claimants were entitled to claim compensation for the death of their son and daughter in law and the same was not bad for mis-joinder or non-joinder for necessary parties. Issue no.3 relates to the award of compensation to the appellants. It is the finding on this issue in both the cases that the appellants are aggrieved and they have filed the present appeal for enhancement of compensation. I will deal with both these appeals separately.

FAO NO.7/2000

6. In this appeal, the appellants have claimed enhancement of compensation awarded by the Tribunal for the death of Mrs.Sheetala Yadav daughter in law of appellant no.1. While awarding compensation for the death of Mrs.Sheetala Yadav, the Tribunal has held that the deceased was a housewife and she may be assisting her husband and parents in law for cooking and other household chores. Taking her income at Rs.950/- per month, the Tribunal held that the loss of income on account of death of daughter in law to the parents of Jai Pal Singh can be estimated at Rs.300/- being 1/3rd of her income and applying to the multiplier of 10, a total compensation of Rs.36,000/- was awarded in favor of the appellants Along with interest @ 10% per annum.

7. The contention of learned counsel for the appellants is that the deceased was only 32 years of age and she was expected to be alive for another 20 to 30 years and, therefore, maximum multiplier of 18 ought to have been applied for awarding compensation.

8. In my view, there is not much force in the submissions made by learned counsel for the appellants. Appellant no.1 is the father in law of the deceased and appellants 2a and 2b are the brothers of the husband of the deceased. Appellant no.1 is admittedly living with his other two sons and the deceased might not have, therefore, rendered service to the father in law throughout her life. It is the husband of a housewife who

sufferers because of a death of his wife as he is entirely dependent upon the services rendered by her. The father in law could not expect that her daughter in law would render services throughout his life. Even otherwise, appellant no.1 was 60 years of age and is living with his two other sons who are looking after him. In the facts of this case the Tribunal has rightly applied the multiplier of 10 while assessing the monetary loss to the parents-in-law of the deceased. I, therefore, do not find any illegality in the award of the Tribunal so as to interfere with the same. This appeal has no merits and is, accordingly, dismissed with no order as to costs.

FAO NO.8/2000

9. The deceased at the time of his death was admittedly working as an Assistant Engineer and at the time of his death in July 1988, he was getting a salary of Rs.2766/- per month. The deceased was a permanent employee of Meerut Development Authority but at the relevant time was working with the Ghaziabad Development Authority on transfer. A witness from the Meerut Development Authority has appeared before the Tribunal and produced a chart Ex.PW-5/1 which shows that as in January 1996, the deceased in normal course would have been getting a salary of Rs.6,964/- per month. The Tribunal while arriving at the compensation payable to the appellants has not taken into consideration the future prospects in life of the deceased and taking the salary of the deceased at Rs.2,200/-, the loss of dependency to the parents was taken at Rs.700/- per month being 1/3rd of the income of the deceased. While, it is not disputed by learned counsel for the appellants that as the deceased was also to look after his own family, he would not have spent more than 1/3rd of his income on his parents, the contention of learned counsel, however, is that firstly the deceased at the time of death was getting a salary of Rs.2766/- as is apparent from the documents placed on record and the Tribunal has, therefore, clearly erred in taking the income of the deceased at Rs.2200/- and secondly the future prospects in life of the deceased have not been taken into consideration.

10. I am in agreement with learned counsel for the appellants that while awarding compensation the Courts should not assess the same on the basis of the income of the deceased at the time of death but future prospects in the life of the deceased should also be taken into consideration. As held by the Supreme Court in *Sarla Dixit Versus Balwant Yadav* : (1993)IILLJ664SC , at the time of grant of compensation, the Court is required to take into consideration the future prospects in the life of the deceased. In the present case the deceased was admittedly having a stable income and was only 34 years of age. As per the evidence on record in normal course he would have retired as Executive Engineer; as per the record filed before the Tribunal, his salary in June, 1996, would have been Rs.6694/-; the age of retirement in Meerut Development Authority was 58 years and the deceased would have, therefore, served for almost 22 years more. Though, the income of the deceased may have gone up to Rs.9,000/- per month at the time of retirement, but as the claimants in the present case are the parents of the deceased his income can be taken to be Rs.6700/- which he would have been getting in June 1996. This Court would, therefore, not be in error in taking the average income of the deceased at Rs.4500/- per month. Deducting 1/3rd from this towards his personal expenses, the loss of dependency to the family comes to Rs.3000/- per month. As already mentioned above, the deceased must not be contributing more than 1/3rd of his income to his parents and thus taking the loss of dependency to the parents of the deceased at 1/3rd of his average income, the loss of dependency in this case would come to Rs.1,000/- per month or say Rs.12,000/- per year. The Tribunal has applied the multiplier of 10 while assessing compensation payable to the appellants. Applying this multiplier, the total loss of dependency to the appellants would come to Rs.1,20,000/- . Adding to this conventional the amount of Rs.10,000/- towards funeral expenses, loss of estate etc. total compensation to which the appellants would be entitled comes to Rs.1,30,000/-.

11. I, accordingly, allow this appeal and enhance the compensation to Rs.1,30,000/- . The appellants would also be entitled to interest @ 9% per annum on the enhanced compensation from the date of filing the petition before the Tribunal till the date of payment.