

Krishan Kumar Sharma and anr. Vs. Shiv Raj Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/698850

Court : Delhi

Decided On : Aug-19-2003

Reported in : I(2004)ACC346; 2005ACJ1085; 2003VIAD(Delhi)319

Judge : S.K. Mahajan, J.

Acts : Motor Vehicles Act; Minimum Wages Act

Appeal No. : FAO No. 275/2002

Appellant : Krishan Kumar Sharma and anr.

Respondent : Shiv Raj Singh and ors.

Advocate for Def. : Suresh Kait, Adv. for Resps. 1 and 2 and ; Jai Gopal Garg, Adv. for Resps. 4 and 5

Advocate for Pet/Ap. : Manjeet Chawla, Adv

Disposition : Appeal partly allowed

Judgement :

S.K. Mahajan, J.

1. ADMIT.

2. With the consent of the parties matter has been heard and disposed of by this order.

3. The appellants are the parents of one Mr. Sudhir Kumar Sharma who died on 5.2.1996 in a road accident caused by the rash and negligent driving of the bus by its driver. The appellants filed an application before the Motor Accident Claims Tribunal claiming compensation for the death of their son in the said accident. It was alleged in the application that the accident was caused entirely due to the rash and negligent driving of the bus, which collided with a tractor as a result of which the deceased who was standing near the rear gate fell down on the road and was run over by a tractor trolley. The Tribunal in the impugned judgment has held that the deceased at the time of the accident was traveling on the rear foot board of the bus and fell down on the road because of the impact of the collision the bus had with the tractor trolley and was run over by the tractor trolley. The Tribunal was, however, of the opinion that the deceased was equally responsible for the accident as he was traveling on the foot board of the bus and taking it to be a case of contributory negligence, the Tribunal held that the appellants will not be entitled to more than 50% of the compensation to which they would have otherwise been entitled had there been no negligence on the part of the deceased. The deceased was 17 years of age at the time of death and was not earning anything. Taking the notional income of the deceased to be Rs.15,000/- per annum as per Second Schedule to the Motor Vehicles Act, the Tribunal deducted 1/3rd towards personal expenses of the deceased and the loss of dependency to the parents was taken at Rs.10,000/- per annum. Applying the multiplier of 13, the total loss of dependency was taken to be Rs.1,30,000/-. Adding to this, a sum of Rs.5,000/- towards funeral expenses and another sum of Rs.25,000/- towards non-pecuniary damages, the total compensation of Rs.1,60,000/- was assessed to be payable to the parents of the deceased. Since it was held by the Tribunal that the deceased was equally responsible for the accident, 50% of the compensation was directed to be paid to the appellants. It was, therefore, directed by the Tribunal that a sum of Rs.80,000/- be paid to the appellants along with interest @ 9% per annum from the date of the petition till realisation of the amount. This award has now been challenged by the appellants by filing the present appeal.

4. The contention of learned counsel for the appellant is that on the basis of the evidence, it could not be held that the deceased was equally responsible for the accident or that it was a case of contributory negligence. It is also argued that taking into consideration the fact that the Second Schedule to the Motor Vehicles Act was inserted in November, 1994, the Tribunal ought to have enhanced the income considering the rise in the cost of living as well as inflation. It is also submitted that in terms of the Second Schedule to the Motor Vehicles Act, the multiplier to be applied in the case of person between the ages of 15 to 20 should have been 16 and not 13 as applied by the Tribunal.

5. The eye-witnesses to the accident produced by the parties before the tribunal have clearly stated that the deceased at the time of the accident was standing at the foot board and because of the collision of the bus had with the tractor trolley, he fell down on the road and was run over by the tractor trolley. The witnesses were cross-examined at length but nothing material was brought out from their testimony to show that the deceased had not contributed anything towards the accident or that he was not traveling on the foot board of the ill-fated bus. While it is true that originally the accident took place because the bus having hit against the tractor, however, the deceased fell down on the road only because of his own negligence as he was traveling on the foot board. A passenger in the bus is not required to travel on the foot board. It is no body's case that the bus was overcrowded or that the deceased could not sit on the seat inside the bus. Had he been occupying a seat in the bus, he would not have fallen on the road even if the bus had collided with tractor. I, thereforee, do not find any infirmity in the findings of the Tribunal that the accident took place because of the contributory negligence of the deceased himself.

6. However, there are some merits in the arguments of learned counsel for the appellant that the Tribunal ought not have taken the income of the deceased at Rs.15,000/- per annum. The Second Schedule to the Motor Vehicles Act was inserted w.e.f. November, 1994. It is common knowledge that since 1994 there is not only increase in the cost of living but there is also increase in inflation. Minimum wage fixed under the Minimum Wages Act in 1994 has almost doubled in the year 2002. thereforee, the Tribunal ought to have taken into consideration

the rise in the cost of living and inflation. Though as per the Second Schedule to the Motor Vehicles Act notional income in the case of non-earning persons should be taken as Rs.15,000/- per annum to arrive at just compensation, however, this Court cannot shut its eyes to the fact that from the time of insertion of Second Schedule in the Act, there has been considerable increase in the cost of living and inflation. Taking these factors into consideration, this Court will not be in error in estimating the average notional income of the deceased at Rs.20,000/- per annum. Deducting 1/3rd from this towards his personal expenses, loss of dependency to the family would come to Rs.13,500/- per annum. Father of the deceased was 50 years of age and mother 45 years of age at the time of accident. Multiplier to be applied in this case is, therefore, as per the age of the parents of the deceased. Applying the multiplier of 15 as per the Second Schedule to the Motor Vehicles Act, the total compensation to which the appellants would be entitled comes to Rs.2,02,500/-. Adding to this the conventional figure of Rs.30,000/- towards non-pecuniary compensation including funeral expenses, the total compensation to which the appellants would be entitled comes to Rs.2,32,000/-. Since the deceased has been held to be equally responsible for the accident and it being the case of contributory negligence, the appellants would be entitled to 50% of such compensation.

7. I, accordingly, partly allow this appeal, modify the award of the Tribunal and direct that the appellants would be entitled to the compensation of Rs.1,16,250/-, rounded up to Rs.1,17,000/-. The appellants will also be entitled to interest on the enhanced compensation @ 9% per annum from the date of filing of the petition before the Tribunal till the date of realisation. In the facts of this case, I leave the parties to bear their own costs.