

Shashi JaIn and ors. Vs. Rajinder Yadav and ors.

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Court : Delhi

Decided On : Sep-03-2003

Reported in : III(2003)ACC262; 2004ACJ1966; 2003VIAD(Delhi)445; 106(2003)DLT525; 2003(71)DRJ649

Judge : S.K. Mahajan, J.

Acts : Motor Vehicles Act

Appeal No. : FAO No.420/2001

Appellant : Shashi JaIn and ors.

Respondent : Rajinder Yadav and ors.

Advocate for Def. : A.K. Kaul, Adv. For Respondent No.3

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

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. Since the only question involved in this case is whether the multiplier applied by the tribunal to arrive at just compensation payable to the appellants is correct and whether at the time of assessing compensation payable to the family of the deceased, the tribunal ought not have taken into consideration the future prospects in the life and career of the deceased, learned counsel for the parties state that as both these questions can be answered on the basis of the impugned judgment, it may not be necessary to requisition the file from the tribunal. I have, therefore, proceeded to decide this appeal without waiting for the file of the Motor Accident Claims Tribunal.

ADMIT.

2. A few facts relevant for deciding this appeal are:-

That the husband of the appellant and father of appellants 2 and 3 died in a road accident caused by the rash and negligent driving of the offending vehicle. The deceased at the time of his death was 41 years of age and was employed as a Junior Engineer with the PWD. His salary at the time of the accident was Rs.11,942/- per month. The tribunal taking the salary of the deceased at Rs.12,000/- per month deducted 1/3rd from this towards his personal expenses and the loss of dependency to the family was taken at Rs.8,000/- per month. Applying the multiplier of 12, the tribunal assessed the loss of dependency to the family of the deceased at Rs.11,52,000/- awarding another sum of Rs.19,000/- towards non-pecuniary damages and funeral expenses, etc., the total compensation of Rs.11,71,000/- was directed to be paid to the appellants. The appellants have now filed this appeal for enhancement of compensation. As already mentioned above, the only ground urged

by learned counsel for the appellants is that while arriving at the loss of dependency to the family of the deceased, the tribunal ought to have taken into consideration the future prospects in the life and career of the deceased and unless there are special reasons to deviate, the tribunal ought to have applied the multiplier mentioned in the Second Schedule to the Motor Vehicles Act.

4. There is force in the arguments of learned counsel for the appellants. It is now well-settled that while assessing the loss of dependency to the family of the deceased, the court taking into consideration the rising cost of living and inflation must consider the future prospects in the life and career of the deceased and unless there are special reasons to deviate, the multiplier mentioned in the Second Schedule to the Act should be applied to arrive at the loss of dependency. In the present case, the deceased was admittedly drawing a salary of Rs.11,942/- per month. The deceased was only 41 years of age and still had 19 years of service left before his retirement. This court will, therefore, not be in error in estimating that the salary of the deceased at the time of retirement would have at least doubled if not more. Applying, therefore, the principles laid down in *Sarla Dixit and another Vs . Balwant Yadav and others* : (1993)IILLJ664SC the average income of the deceased would come to Rs.17,913/- per month or say Rs.18,000/- per month. Deducting 1/3rd from this towards his personal expenses, the loss of dependency to the family of would come to Rs.12,000/- per month or Rs.1,44,000/- per year. Applying the multiplier of 15 in terms of Second Schedule to the Motor Vehicles Act, as the deceased was 41 years of age at the time of the accident, the total loss of dependency to the family of the deceased would come to Rs.21,60,000/-. Adding to this another sum of Rs.19,000/- towards non-pecuniary damages and funeral expenses, etc., as awarded by the Tribunal, the total compensation to which the appellants would be entitled comes to Rs.21,79,000/-.

5. I, accordingly, allow this appeal, modify the award and direct the respondents to pay compensation of Rs.21,79,000/- to the appellants. The appellants will also be entitled to the interest @ 6% per annum on the enhanced compensation from the date of filing of the application before the tribunal till realisation. In the facts of this case, however, I leave the parties to bear their own costs.

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