Kari Devi and ors. Vs. Desh Raj and ors.

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SooperKanoon Citation : sooperkanoon.com/701100

Court : Delhi

Decided On : Sep-22-2003

Reported in : I(2004)ACC228; 2003VIIAD(Delhi)325

Judge : S.K. Mahajan, J.

Acts : Motor Vehicles Act

Appeal No. : FAO No. 221/2001

Appellant : Kari Devi and ors.

Respondent : Desh Raj and ors.

Advocate for Def. : S. Paul, Adv.

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

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. ADMIT.

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

3. The appellants have filed this appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal for the death of the husband of appellant no.1 and father of appellants 2 to 5 in a road accident caused by the rash and negligent driving of the offending vehicle by its driver. While awarding compensation, the Tribunal had taken the income of the deceased at Rs.1937/- which were the minimum wages payable to an unskilled worker in the year 1998 and applying the multiplier of 9, a total compensation of Rs.1,56,400/- was awarded in favor of the appellants. The grounds urged by learned counsel for the appellants to challenge the award are that (a) the Tribunal has not taken into consideration the future prospects in the life and career of the deceased to arrive at the loss of dependency to the family and (b) instead of the multiplier of 13 in terms of the Second Schedule to the Motor Vehicles Act, the Tribunal has applied the multiplier of 9.

4. It is submitted by learned counsel for the respondents that it had come in evidence that the age of the deceased was 50 years as is evident from the hospital records and the Tribunal has, thereforee, rightly applied the multiplier of 9 to arrive at just compensation payable to the appellants.

5. The deceased had died in a road accident on 24.12.1998. In the absence of any other proof the Tribunal, in my opinion, has rightly taken the minimum wages payable to an unskilled worker to be the income of the deceased as on the date of the death. In 1998 the minimum wages of an unskilled worker were Rs.1937/- per month, however that in my opinion cannot be end of the mater inasmuch as the Tribunal keeping in view the observations of the Supreme Court in Sarla Dixit and another Versus Balwant Yadav and others : (1993)IILLJ664SC was required to consider the future prospects in the life and career of the deceased. Because of the rise in cost of living and inflation, the minimum wages notified by the appropriate Government were increased from time to time and as on 1.8.2002, the minimum wages payable to an unskilled worker were Rs.2679.70 paise which is almost 50% higher than the minimum wages payable in 1998. This Court can, thereforee, safely presume that the minimum wages would have at least doubled within a period of another five years. Taking mean of the maximum wages which the deceased may have earned the wages payable in the year 1998, the average

income of the deceased can be taken to be Rs.2,905/- per month. Deducting 1/3rd from this towards the personal expenses of the deceased, loss of dependency to the family would come to Rs.1937/- per month or say Rs.23244/- per year. Widow of the deceased in his statement has clearly stated that the deceased was 45 years of age as on the date of the accident. No question has been put to her in the cross-examination about the age of the deceased. No doubt in the MLC prepared by the hospital, the age of the deceased was mentioned as 50 years, however, in the absence of any other evidence age mentioned in the hospital records cannot be taken to be the age of the deceased as it was the rough estimate of the person who had taken the deceased to the hospital immediately after the accident. There is no reason as to why the age of the deceased mentioned by his widow in her evidence should not be taken to be the age of the deceased. As per the Second Schedule to the Motor Vehicles Act for persons between the ages of 45 to 50 years, the multiplier to be applied is 13. Applying the multiplier of 13, the loss of dependency to the family would come to Rs.3,02,172/-. Adding to this the non-pecuniary damages of Rs.16,000/- as awarded by the Tribunal the total compensation payable to the appellants would come to Rs.3,18,172/-.

6. I, accordingly, allow this appeal, modify the award and direct that the appellants would be entitled to the compensation to Rs.3,18,172/-. The appellants will also be entitled to interest @ 8% per annum from the date of filing of the petition before the Tribunal till realisation. In the facts of the case, the parties are left to bear their own costs.