

Kanwaljit Kaur Vs. Pradeep Kumar and ors.

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Court : Delhi

Decided On : Nov-19-2003

Reported in : I(2004)ACC274; 2004ACJ1155

Judge : S.K. Mahajan, J.

Appeal No. : FAO No. 70/1999

Appellant : Kanwaljit Kaur

Respondent : Pradeep Kumar and ors.

Advocate for Def. : Adil Alvi, Adv.

Advocate for Pet/Ap. : Anand Kumar, Adv

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. Admit.

2. The appellant has filed this appeal for enhancement of compensation for the death of one Mr. Inderjit Singh husband of appellant No. 1 and father of appellants 2 and 3 in a road accident caused by the rash and negligent driving of the offending vehicle by its driver. The grounds urged in this appeal are (i) that despite

there being sufficient evidence before the Tribunal to hold that the income of the deceased at the relevant time was Rs. 6000 to 7000/- per month, the Tribunal has taken the income of the deceased at Rs. 1000/- and (ii) the amount being spent by the deceased upon himself has been taken to be 1/3rd of his income, though, in view of the judgment of the Supreme Court in U.P. State Road Transport Corporation v. Trilok Chandra : (1996)4SCC362 it should have been taken as 1/4th of the income of the deceased.

3. The witnesses who had appeared on behalf of the appellant before the Tribunal though had stated that the deceased was having three machines in his workshop and was employing six to seven persons but no one has stated as to what was the income of the deceased. The wife of the deceased, namely, appellant No. 1 has appeared as a witness before the Tribunal and had stated that she was receiving Rs. 100/- per day from the deceased for meeting the household expenses. The Tribunal was of the view that in such matters, the income is sometimes exaggerated by the claimants to claim higher compensation and except the oral evidence of the witnesses, nothing has been produced on record to prove the income of the deceased and his income, therefore, could not be taken to be more than Rs. 1000/- per month. Applying the principles laid down in General Manager Kerala State Road Transport Corporation v. Susamma Thomas and others : AIR 1994 SC1631 , the average income of the deceased was taken at Rs. 2000/- per month and deducting 1/3rd from the same towards his personal expenses, the loss of dependency was assessed at Rs. 1300/- per month.

4. While it may be true that sometimes the tendency of the claimants has been to exaggerate the income of the deceased to get higher compensation, however, every case has to be decided on its own facts. In the present case the deceased was admittedly employing six to seven persons under him and was having three machines in his workshop for repairs etc. The deceased also owned a scooter at the time of his death which clearly shows that he was a bit affluent. Though, exact income of the deceased had not come on record, however, on the basis of the oral evidence of the witnesses including the statement of the wife of the deceased, I am of the view that income of the deceased can be taken at Rs. 2000/- per month at the time of the accident. Applying the principles laid down in Sarla Dixit and

another v. Balwant Yadav and others 1996 ACJ 581 the average income of the deceased can be taken as Rs. 3000/- per month. The deceased at the time of his death was supporting his wife, two minor children and his father. Besides himself, there were thus two adults and two minors in the family. Applying the ratio of the judgment in U.P. State Road Transport Corporation v. Trilok Chandra (supra) the family can thus be divided into 8 units, namely, 2 units for each of the three adults and one unit for each of the two minors and deducting the units of the deceased towards his personal expenses the balance can be taken to be the loss of dependency to the family of the deceased.

5. Thus deducting 1/4th of the income of the deceased towards his personal expenses, the loss of dependency to the family of the deceased comes to Rs. 2250/- per month or say Rs. 27, 000/- per year. Applying the multiplier of 16 to the loss of dependency, the total loss of dependency to the family would come to Rs. 4, 32, 000/-. Adding to this another sum of Rs. 15, 000/- towards non-pecuniary damages by way of loss of love and affection, loss of estate and funeral expenses, etc. the appellants will be entitled to total compensation of Rs. 4, 47, 000/-.

6. I, accordingly, allow this appeal, modify the impugned award and enhance the compensation to Rs. 4, 47, 000/-. The appellants will also be entitled to interest @ 9% per annum on the enhanced compensation from the date of the filing of the application before the Tribunal till payment.