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SooperKanoon Citation : sooperkanoon.com/704897

Court : Delhi

Decided On : Apr-07-1995

Reported in : 1(1996)ACC40; 1995ACJ789

Judge : C.M. Nayar, J.

Appellant : Bimla Devi and anr.

Respondent : New India Assurance Co. Ltd. and ors.

Judgement :

C.M. Nayar, J.

1. The present first appeal arises from the award dated 31.3.1989 of Mr. D.S. Sidhu, Judge, Motor Accidents Claims Tribunal, Delhi. The appellants-claimants have moved this Court for enhancement of compensation which was assessed at Rs. 1,20,000/-.

2. The appellants filed the petition under Section 110-A of the Motor Vehicles Act for grant of compensation in the sum of Rs. 5,00,000/- against the respondents. The deceased, Vipin Kumar, is stated to have died as a result of accident on 21.7.1984 at about 6.50 p.m. while he was driving a two-wheeler scooter No. DIH 3140 from Saraswati Vihar. The scooter met with an accident with truck No. UST 2229 which was being driven by Respondent No. 4. The deceased was employed in Delhi Administration on a salary of Rs. 970/- per month and it was further stated

that he was earning a sum of Rs. 700/- per month by working as a part-time photographer. The age of the deceased was stated to be 22 years. He was studying in B.Com. II year and had appeared in the examination from the School of Correspondence Courses. The appellant No. 1 is the mother and appellant No. 2 is the brother of the deceased. The father of the deceased had since expired prior to the date of accident. Respondents Nos. 2 to 4 filed their written statements and took preliminary objection that the petition was not maintainable as the truck was not involved in the accident and the petition was bad for misguide of parties. The Insurance Company, Respondent No. 1, also filed the written statement and raised the preliminary objection that the said respondent did not receive any notice regarding the alleged accident. On the pleadings of the parties the following issues were framed:

(1) Whether the deceased, Vipin Kumar, died as a result of rash and negligent driving of vehicle No. UST 2229 on the part of Respondent No. 1?

(2) Whether petitioners are the legal representatives of the deceased?

(3) Whether the driver was not holding a valid driving license at the time of accident?

(4) Whether the vehicle was being driven in, contravention of the terms and conditions of the Insurance Company?

(5) Whether the insured had no insurable interest at the time of accident? If so, its effects?

(6) To what amount of compensation are the petitioners entitled and from whom?

3. The Tribunal on appreciation of evidence came to the conclusion that the accident occurred on 21.7.1984. The witnesses have clearly deposed about the truck hitting the scooter of the deceased. The truck was being driven in a rash and negligent manner and the driver of the truck ran from the spot and the vehicle was seized from the Loni Border on receipt of message from the Control Room by the Investigating Officer. The First Information Report also alleged that the truck driver was arrested in the criminal case. The plea taken by the respondents was held to

be bogus and false by the Tribunal and issue No. 1 was decided in favor of the appellants-claimants against the respondents. Issue No. 2 was disposed of by the learned Judge by holding that the appellants were the legal heirs of the deceased as the father of the deceased had already expired in the year 1980. Issue Nos. 3,4 and 5 were also decided in favor of the appellants-claimants.

4. The question of compensation to which the appellants had led their claim was considered in issue No. 6 and on the basis of appreciation of evidence on record the salary of the deceased was assessed at Rs. 1,500/- per month on the basis of the IVth Pay Commission Report and after the deduction of the personal expenditure to the tune of 1/3rd the loss to the estate and dependency was fixed at Rs. 1,000/- per month as a result of death. The learned Judge noted that appellant No. 1 was 45 years of age at the relevant time and by taking the normal expectancy of life to be 70 years it was estimated that she would have been further supported by her deceased son for about 15 years though the period would have been decreased on account of possible marriage of the deceased. The multiplier in these circumstances was assessed at 10 and the compensation awarded to the appellants was fixed at Rs. 1,20,000/-.

5. The learned Counsel for the appellants has contended that the multiplier adopted by the Tribunal is on the lower side in view of the settled position of law in this regard by various judgments of this Court and the Supreme Court. To reiterate the proposition that the multiplier adopted in this case could not in any manner be less than 20 or 25 he has cited *Krishan Lal v. Mohd, Din* . The multiplier in similar facts was assessed at 20.

6. In the present case, the mother of the deceased was aged about 45 years at the time of accident which took place on 21.7.1984. She is still living. The father of the deceased died in the year 1980 and the learned Counsel for the respondents has contended that it will indicate the absence of longevity in the family. Learned Counsel for the appellants has, however, denied the suggestion and has argued that the father did not die a natural death and expired as a result of food poisoning. Be that as it may, multiplier adopted by the Tribunal of 10 is rather on the lower side and cannot be accepted to be reasonable in the facts and circumstances of

the present case. The Supreme Court has adopted higher multiplier in the cases of Hardeo Kaur v. Rajasthan State Road Trans. Corpn. : [1992]2SCR272 and Urmilla Pandey v. Khalil Ahmad : [1994]3SCR1001 , on the basis of life expectancy of not less than 60-65 years. The life expectancy of the mother of the deceased can be assessed in the present circumstances as 65 or 70 years.

7. The Tribunal has, therefore, erred in adopting the multiplier of 10 which cannot be accepted in the facts and circumstances of the present case. The deceased was a young man of 22 years and was gainfully employed in a Government job. It could reasonably be presumed and accepted that he would have continued to look after his mother particularly in the absence of his father who had predeceased him. Mother in all probability would have continued to live with her son and the Tribunal had correctly assessed normal expectancy of life of the mother to be 70 years but has erred in reducing the multiplier to 10 as it can be held that the deceased would have in any case contributed and looked after his mother during her lifetime. Taking an overall view of all the facts and circumstances of the present case, it can be accepted that the multiplier of 20 shall be just, equitable and reasonable. therefore, the annual amount which the deceased Vipin Kumar would have been spending in this regard would come to Rs. 12,000/- (Rs. 1,000/- x 12) which multiplied by 20 would come to Rs. 2,40,000/-. The amount of compensation is accordingly assessed at that amount to which the appellants-claimants are held entitled. The appellants shall further be entitled to simple interest at the rate of 15 per cent per annum from the date of petition till realisation. The amount which has already been disbursed to the appellants-claimants shall be taken into consideration while working out the amount now held payable. The appeal is allowed in the above terms. The appellants shall be entitled to costs which are quantified at Rs. 5,000/-.