

Bimla Devi and ors. Vs. Durga Pershad Sharma and ors.

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SooperKanoon Citation : sooperkanoon.com/706591

Court : Delhi

Decided On : Nov-11-2003

Reported in : I(2004)ACC156; 2004ACJ672

Judge : Pradeep Nandrajog, J.

Acts : Motor Vehicles Act

Appeal No. : F.A.O. No. 197 of 1991

Appellant : Bimla Devi and ors.

Respondent : Durga Pershad Sharma and ors.

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

Judgement :

Pradeep Nandrajog, J.

1. The deceased Raj Kumar was earning his livelihood by plying a three-wheeler scooter rickshaw. Appellants being his widow, three minor children and parents were dependent on him. On 3.8.1981, at about 1.45 p.m. motor car bearing No. DLI 1927 being driven by the respondent No. 1 hit the scooter of the deceased. As a consequence of the accident Raj Kumar died.

2. Claim petition was filed claiming compensation in the sum of Rs. 5,00,000 under the Motor Vehicles Act.
3. By an award dated 23.5.1991 it has been held that the accident was caused due to rash and negligent act of the respondent No. 1. It has been held that the car bearing No. DLI 1927 was owned by respondent Nos. 2 and 3 and stood insured with the respondent No. 4.
4. Holding that the deceased was aged 26 years as on the date of his death and the evidence on record suggested that as a scooter driver the deceased was earning between Rs. 30 and Rs. 40 per day, the dependency was assessed at Rs. 800 per month. Multiplier applied was 16. Total compensation assessed was Rs. 1,53,600. Same was apportioned as under:
- (1) Bimla Devi (petitioner No. 1) Rs. 83,600 (2) Narinder Kumar (petitioner No. 2) Rs. 10,000 (3) Jitender Kumar (petitioner No. 3) Rs. 10,000 (4) Rajinder Kumar (petitioner No. 4) Rs. 10,000 (5) Phool Wati (petitioner No. 5) Rs. 20,000 (6) Ved Prakash (petitioner No. 6) Rs. 20,000 Total Rs. 1,53,600
5. Simple interest at the rate of 12 per cent per annum was allowed from the date of filing of the petition till its realisation.
6. Present appeal seeks enhancement of compensation, inter alia, on the grounds:
- (A) Prospects of future increase in earnings have not been considered by the Tribunal;
- (B) Age of the deceased was 26 years and the multiplier of 16 was inadequate;
- (C) Nothing has been paid on account of pain and suffering to the deceased;
- (D) Nothing has been paid for loss of consortium to the appellant No. 1, loss of love and affection to the three minor children and loss of son to the parents of the deceased.
7. As on the date of the accident the deceased was aged 26 years. Appellant No. 1, the widow was aged 24 years, three minor sons were aged 5 years, 4 years and

11 months respectively. Age of the parents is not on record.

8. I have perused the record. The learned Tribunal has not considered the increase in the earnings of the deceased. Aged 26 years as on the date of his death and being engaged in the work of plying a three-wheeler scooter rickshaw, it could safely be assumed that the deceased would have earned from his avocation at least till the age of 60 years, i.e., for another 34 years. In this period one could safely assume that his income would have (Sic. doubled), if not gone up by at least three times. Treating the income of the deceased at about Rs. 1,000 per month, keeping in view the large family of the deceased the dependency has been assessed at Rs. 800 per month by the Tribunal. I agree that benefit of increase in future earnings has to be given, but while giving benefit of increase in future earnings it has to be taken into account that the parents would have not lived till the deceased would have turned 60 years. Similarly, the three minor children would have become self dependent in period ranging from 18 to 25 years. As and when dependency would have decreased, deceased would have had a larger amount to spend on himself, which one may safely assume he would have so done. Taking all these factors into consideration, the average mean earnings of the deceased would be Rs. 2,000 per month and the average mean dependence could reasonably be expected to be taken at Rs. 1,500 per month.

9. As regards the multiplier, considering that the deceased was aged 26 years, his widow was aged 24 years, 3 minor children would have ceased to be dependent on their father in period ranging 18-25 years, the parents dependency would have ceased in another 8-10 years, in my opinion, the appropriate multiplier to be applied should be 20. The compensation on this account works out to Rs. $1,500 \times 12 \times 20 = \text{Rs. } 3,60,000$. Considering the status of the family on the date of death of deceased, the age of the minor children and widow a sum of Rs. 30,000 would be adequate on account of loss of consortium to the appellant No. 1, loss of love and affection of the father to appellant Nos. 2 to 4 and loss of son to appellant Nos. 5 and 6. The total compensation, therefore, works out to Rs. 3,90,000.

10. The learned Tribunal has awarded compensation in the sum of Rs. 1,53,600. By my present order the same stands enhanced by Rs. 2,36,400. This enhanced

compensation shall carry interest at the rate of 9 per cent per annum from the date of filing of the claim petition till date of realisation. I am determining interest at 9 per cent per annum, taking into account that when the claim petition was filed in the year 1981 bank interest on fixed deposit for duration of over 3 years was in the range of 12 per cent to 13 per cent and successively decreased to about 9 per cent by the year 2000 and correctly stands at about 5.5 per cent per annum.

11. A major share of the enhanced compensation must go to the widow, since, while assessing the compensation, I have taken into consideration that her dependency would have been the maximum, that of the appellant Nos. 2 to 4 was between 18-25 and that of the parents was 8-10 years. The enhanced compensation shall be apportioned as under:

Appellant No. 1 Rs. 1,50,000 Appellant No. 2 Rs. 20,000 Appellant No. 3 Rs. 25,000 Appellant No. 4 Rs. 30,000 Appellant No. 5 Rs. 5,700 Appellant No. 6 Rs. 5,700
Total Rs. 2,36,400

12. The enhanced compensation along with interest shall be payable jointly and severally by respondent Nos. 1 to 4.

With the directions above, appeal stands disposed of.