

Om Kumari and ors. Vs. Shish Pal and ors.

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Court : Delhi

Decided On : Jan-18-2007

Reported in : 140(2007)DLT622

Judge : Pradeep Nandrajog, J.

Acts : [Minimum Wages Act, 1948](#); [Motor Vehicles Act, 1988](#) - Sections 163A

Appeal No. : F.A.O. No. 96 of 1998

Appellant : Om Kumari and ors.

Respondent : Shish Pal and ors.

Advocate for Def. : Lokesh Kumar, Adv.

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

Judgement :

Pradeep Nandrajog, J.

1. The widow, parents and the younger brother and sister of the deceased Narinder Kumar Sehrawat, who was the eldest son in the family, seek enhancement of the compensation awarded by the learned M.A.C. Tribunal vide award dated 6.5.1997.

2. Since there are no cross-objections to the award nor has any appeal been filed by the owner, driver or the insurer of the offending vehicle, findings in the award that deceased Narinder Kumar Sehrawat died as a result of an accident involving truck No. DEL 1945 being driven by respondent No. 1 and owned by respondent No. 2 have attained finality. The finding that the death was due to rash and negligent act of the driver of the truck has also attained finality.

3. Only issue which requires consideration is the compensation assessed to the widow, parents and the younger brother and sister of the deceased.

4. Disbelieving the testimony of the family members that apart from earning Rs. 1,500 per month as an employee of Prime Couriers Pvt. Ltd. (which testimony was believed) during morning hours the deceased used to engage himself in the business of distributing newspapers and magazines, loss of dependency has been determined.

5. In view of the salary certificate issued by the courier agency, income of the deceased has been taken at Rs. 1,500 per month. Rs. 625 per month has been deducted on account of personal expenses of the deceased. Loss of dependency to the family per month is determined at Rs. 875. Applying the multiplier 16, pecuniary loss to the family is determined at $\text{Rs. } 875 \times 12 \times 16 = \text{Rs. } 1,68,000$.

6. Awarding further sum of Rs. 10,000 due to loss of husband to the wife, son to the parents and brother to the brother and sister, compensation amount determined is Rs. 1,78,000. It stands rounded off to Rs. 1,80,000.

7. A twofold contention is urged. It is, firstly, urged that there is no reason to disbelieve the testimony of the parents that the deceased was gainfully employed during morning hours in his business, i.e., of distributing magazines and newspapers. Second contention urged is that future prospects have been ignored.

8. The time of the accident is very relevant and throws light on the activities of the deceased during morning hours. Accident took place at 4.45 a.m. on 10.5.1989. According to the parents, the deceased was going to take delivery of newspapers and magazines for distribution.

9. I have no reasons to disbelieve the parents. It is common knowledge that around 4.30 a.m. to 5 a.m. at fixed points in the city, publishers of daily newspapers deliver newspapers which are picked up by vendors for further distribution. 4.45 a.m. is a fairly unearthly hour for a person to be moving around. I believe the parents that at 4.45 a.m., purpose of outward visit of the deceased from the house was to collect the newspapers and magazines for delivery to the consumers.

10. Testimony of the parents is that the deceased was contributing Rs. 2,500 to Rs. 3,000 per month for the family.

11. The family consists of 2 parents, a wife, a younger brother and a sister. The deceased owned a two-wheeler. This shows that the deceased was having means to maintain a scooter. If he was earning only Rs. 1,500 per month it is difficult to believe that deceased would be maintaining a scooter.

12. Evidence probablises that the deceased was having some income other than wages earned from the courier agency. It had to be from the business of distributing newspapers and magazines in the morning hours.

13. The accident took place in May 1989, considering the earning levels as of said year, I hold that the claimants would be entitled to a finding in their favor that earnings of the deceased from his activities in the morning would be Rs. 750 per month.

14. That gives a total earnings of the deceased at Rs. 2,250 per month.

15. There would obviously be some future prospects.

16. The future prospects may not be linked to promotional avenues but certainly would be linked to the inflation and increased wages over the years.

17. I have before me the minimum wages notified under the [Minimum Wages Act, 1948](#), which show that pertaining to metriculates, minimum wages have risen from Rs. 325 per month as on 1.1.1980 to Rs. 1,014 per month as on 1.5.1989. The same have risen to Rs. 2,796 per month as on 1.2.1999. Between 1.1.80 and

- 1.5.1989, the percentage increase is slightly over 200. Over the next 10 years, percentage increase is approximately 180.
18. Minimum wages are notified keeping into account the inflationary trends and cost indices. These are the minimum wages which law presumes would be required for a person to sustain himself at the minimum level of subsistence.
19. The deceased had over 30 years of gainful employment assuming he would have worked till the age of 60 years.
20. I am dealing with an accident which took place in 1989. The Second Schedule inserted by virtue of Section 163-A of the [Motor Vehicles Act, 1988](#) was not in existence then.
21. Multiplier adopted by the learned Tribunal is 16.1 find it fair and reasonable.
22. However, future increase in wages has been ignored.
23. I have determined the income of the deceased at Rs. 2,250 per month. It could safely be assumed, in light of the increase in minimum wages, date whereof has been noted by me herein above, that the income of the deceased would have doubled by the time he ceased to be in gainful employment. The income would rise to Rs. 4,500 per month. Thus the mean average income will come to Rs. $4,500 + \text{Rs. } 2,250 / 2 = \text{Rs. } 3,375$.
24. Appropriating one-third towards the personal expenses of the deceased the loss of dependency to the family per month comes to Rs. 2,250. The annual loss of dependency comes to Rs. 27,000. Multiplied by 16, the figure comes to Rs. 4,32,000.
25. Maintaining the other sum awarded, since loss of compensation as per the award is Rs. 1,68,000, I dispose of the appeal enhancing the compensation by further sum of Rs. 2,64,000.
26. The enhanced compensation of Rs. 2,64,000 shall be paid to the appellants in the same proportion as per the award together with interest at the rate of 6 per cent per annum from the date of claim petition till date of realisation.

27. No costs.

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