

Pushpa Devi and ors. Vs. United India Insurance Co. Ltd. and ors.

Pushpa Devi and ors. Vs. United India Insurance Co. Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/713228

Court : Delhi

Decided On : Jan-17-2007

Reported in : II(2007)ACC95; 2007ACJ1431

Judge : Pradeep Nandrajog, J.

Appeal No. : M.A.C. Appl. No. 36 of 2004

Appellant : Pushpa Devi and ors.

Respondent : United India Insurance Co. Ltd. and ors.

Advocate for Def. : R.K. Kataria, Adv.

Advocate for Pet/Ap. : O.P. Goyal and; Navneet Goyal, Advs

Judgement :

Pradeep Nandrajog, J.

1. Deceased Sub-Inspector Jeevan Ram Sharma died as a result of an accident which took place on 29.11.1999. He was aged 52 years when he died.
2. Offending vehicle No. DIG 9491, a truck driven by the respondent No. 1 and owned by respondent No. 2 was insured with respondent No. 3.
3. Since the claimants, being the wife, mother and 5 minor children of the deceased are seeking enhancement of the compensation awarded, I need to note

only such relevant facts as are necessary to decide the issue of compensation.

4. As noted above, the deceased was a Sub-Inspector with Delhi Police. His last salary certificate Exh. PW 1/A shows the salary of Rs. 12,021 per month.

5. Considering the family of deceased, the Tribunal has held that it would be safe to assume that th of the income of the deceased would be spent on self. Family pension was also deducted. Learned Tribunal has treated the loss of dependency to the family at Rs. 51,000 per annum. Applying the multiplier 9, loss to the family has been determined at Rs. 51,000 x 9 = Rs. 4,59,000. Rs. 2,000 has been allowed towards funeral expenses and Rs. 25,000 as the conventional damages to the family due to the loss of the bread-earner.

6. Two points are urged in the appeal. The first is that family pension received could not have been accounted for to effect a deduction and secondly that future prospects have not been properly considered by the court.

7. Learned Counsel for the petitioner has shown to me a certificate obtained from the department that had the deceased been alive and had he continued to work as Sub-Inspector his current monthly salary would have been Rs. 18,814 inclusive of all the allowances.

8. I need not look into the current salary certificate for the reason as held in the case in *Sarla Dixit v. Balwant Yadav* : (1993)IILLJ664SC and *General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas* : AIR 1994 SC1631 , where the deceased was in government service, future prospects can be considered in the light of the past service record.

9. Assuming that the deceased would have earned no promotions, being in service, yearly increments would have been availed of.

10. The deceased was aged 52 years.

11. Multiplier adopted by the Tribunal is 9. In my opinion it had to be 8 as age of retirement is 60 years. For 8 years, income of the deceased would safely be expected to have gone up by if not more, at least by 60 per cent. This actually has

happened for the reason as per certificate shown to me the deceased would have been earning Rs. 18,000 per month.

12. Exh. PW 1/A shows the transport allowance, uniform allowance, etc. These are relatable to actual service. They are personal to the deceased. Removing allowances which are personal to the deceased and related to actual service, as per Exh. PW 1/A, the salary of the deceased would be Rs. 11,000 as on the date of his death. Comparative salary and allowances excluding allowances of a personal nature and relatable to the actual service would increase the salary by the time deceased would retire from service to Rs. 16,000 per month. The average mean salary of the deceased comes to $(Rs. 11,000 + Rs. 16,000) \div 2 = Rs. 13,500$ per month.

13. There are various decisions of this court and Apex Court wherein it has been held that pensionary deductions cannot be taken into account while working the loss of dependency. The first is the decision of this court reported in Delhi Transport Corporation v. Veena Rani Sethi 1989 ACJ 790. The said decision was followed in the decision reported as Elizebeth Mathew v. Vasdev : AIR1990 Delhi121 . Similar view was taken by the Apex Court in the report published in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75.

14. I may only add that since loss of dependency is usually determined in the context of the remaining service span, more often than not it is ignored that had the deceased lived a normal life, he would have earned a full pension and his dependants would have benefited there from. This appears to be the reason why pensionary benefits should be excluded while determining loss of dependency to the family members.

15. Mean average monthly income of the deceased has been determined by me at Rs. 13,500.

16. Considering the extended family of the deceased it would be sufficient to assume that th of income of the deceased would have been appropriated for personal expenses. Thus, loss of dependency to the family comes to Rs. 10,000 per month.

17. Considering that the deceased has 8 years of service left, I disagree with the multiplier adopted by the Tribunal being 9.1 adopt the multiplier 8. The loss of dependency accordingly comes to Rs. 10,000 x 12 x 8 = Rs. 9,60,000.

18. The appeal shall stand disposed of modifying the award as per para 5 above. Enhanced compensation shall be paid in the same proportion as per the award to the appellants together with interest at the rate of 6 per cent per annum from the date of claim petition till date of realisation.

19. Enhanced compensation pertaining to minor children of the deceased would be invested in a fixed deposit for a period of 5 years and would be paid over to them after 5 years. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com