

Mohinder Kumar Vs. Sushil Kumar

Mohinder Kumar Vs. Sushil Kumar

SooperKanoon Citation : sooperkanoon.com/713274

Court : Delhi

Decided On : May-16-2007

Reported in : 2007ACJ2374

Judge : Pradeep Nandrajog, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 92A and 110A

Appeal No. : F.A.O. No. 257 of 1994

Appellant : Mohinder Kumar

Respondent : Sushil Kumar

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

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

Judgement :

Pradeep Nandrajog, J.

1. On 22.12.87, deceased Satish Kumar, aged 21 years, died in a road accident involving bus No. HYE 1278. He was survived by his parents, 2 brothers and 2 sisters.

2. Parents of the deceased filed a claim petition under Section 110-A read with Section 92-A of [Motor Vehicles Act, 1939](#), claiming compensation of Rs. 2,00,000

on account of death of the deceased in the said road accident.

3. Vide award dated 13.7.1994, learned Tribunal awarded compensation in sum of Rs. 86,400 to the parents of the deceased.

4. Aggrieved by the amount of compensation awarded by learned Tribunal, parents of the deceased have filed the present appeal praying for enhancement of compensation.

5. Unfortunately, father of the deceased died during the pendency of the present appeal. His legal heirs were brought on record.

6. Since the only issue involved in the appeal relates to the quantum of compensation, I shall be noting such facts as are relevant for adjudication of the said issue.

7. Deceased was aged 21 years as on the date of the accident.

8. Father and mother of the deceased were aged 45 years and 41 years respectively at the time of accident.

9. Deceased was self-employed at the time of accident. He was earning his livelihood by working as TSR driver.

10. Noting the testimony of the father of the deceased, the learned Tribunal has determined income of the deceased at the time of accident at Rs. 1,500 per month.

11. Noting that deceased was unmarried at the time of accident, for purposes of calculating loss of dependency, Claims Tribunal has divided period of dependency of parents into 2.

12. First period taken by the Tribunal is the period of 4 years during which the deceased would have remained unmarried. Tribunal has assumed that during this period of 4 years, deceased would have spent major portion of his earnings on his parents and on this assumption deduced $\frac{1}{4}$ th of the earnings towards personal spending of the deceased. Thus, for this period of 4 years, loss of dependency has

been determined by Claims Tribunal at Rs. 57,600 ($\text{Rs. } 1,500 \times 12 \times 4 \times 80/100$).

13. Second period taken by the Tribunal is the period of 12 years during which the deceased would have married and had his own family. Tribunal has assumed that during this period of 12 years, deceased would have spent major portion of his earnings on his own family. The Tribunal further assumed that during this period deceased would have spent only 13 per cent of his income on his parents. Thus, for this period of 4 years, loss of dependency has been determined by Tribunal at Rs. 28,800 ($\text{Rs. } 1,500 \times 12 \times 12 \times 13/100$).

14. After perusing the award, I find award is faulty on two counts.

15. While determining loss of dependency, Tribunal has erred in ignoring the prospects of future increase in the income of the deceased. Tribunal failed to take note of the fact that wages increase from time to time to equalise fall in purchasing power of rupee.

16. Deceased was aged 21 years as on the date of accident. It could reasonably be expected that he would have worked till the age of 60. Meaning thereby, the deceased would have worked for another 39 years.

17. Future increase in earnings of the deceased can be gauged from the fact that to neutralise rise in inflation, cost of living and fall in the purchasing power of rupee, the minimum wages virtually double after every 10 years. Thus, considering that had the deceased been alive, he would have worked for another 39 years, it could reasonably be assumed that earnings of the deceased would have at least tripled by the time he would have left gainful employment. Thus, mean average income of the deceased comes to Rs. 3,000. [$\text{Rs. } 1,500 + \text{Rs. } 4,500$ (3 times increase in income) : 2] 2].

18. The Tribunal has further erred in assuming that once deceased would have married, he would have spent only 13 per cent of his income on his parents.

19. It is relevant to note that deceased had 2 brothers and 2 sisters. Deceased was the eldest son of his parents. His brothers, namely, Vinod and Shailesh, were aged 15 years and 9 years respectively at the time of accident. His sisters,

namely, Santosh and Kavita, were aged 20 years and 16 years respectively at the time of accident. Thus, besides parents of the deceased, his brothers and sisters were also dependent upon his earnings.

20. His sister, Kavita would have been married in the next 2 to 3 years, but his other brothers and sister, particularly, his brother Shailesh who was aged only 9 years at the time of accident, would have remained dependent upon the deceased for another period of 8 to 9 years.

21. Noting the age of the brothers and sisters of the deceased and the fact that they would have remained dependent upon the deceased for a further period of 8 to 9 years, I consider it reasonable to assume that deceased would have spent half of his earnings towards his parents and siblings. Thus, the loss of dependency comes to Rs. 1,500 per month.

22. Considering that the parents of the deceased were aged 45 years and 41 years respectively at the time of accident as also noting dependency of the siblings, multiplier of 16 adopted by the Tribunal is on the higher side.

23. In so holding, I note the judgment of the Apex Court in the decision reported as *Municipal Corporation of Greater Bombay v. Laxman Iyer* : AIR 2003 SC4182 . In the said case, deceased was aged 18 years and his parents were aged 47 years and 43 years respectively at the time of accident. Noting the age of the parents, Supreme Court applied multiplier of 10.

24. Noting the aforementioned decision as also age of the parents in the instant case, I consider multiplier of 10 as reasonable. Thus, total loss of dependency comes to Rs. 1,500 x 12 x 10 : Rs. 1,80,000.

25. Considering that the Tribunal has awarded no compensation under the head 'non-pecuniary damages' and that the accident relates to the year 1987, I award compensation in sum of Rs. 10,000 under the said head. Thus, total compensation comes to Rs. 1,90,000.

26. The Claims Tribunal has awarded compensation in sum of Rs. 86,400. Thus, compensation is further enhanced by a sum of Rs. 1,03,600.

27. Considering that the interest rates fluctuated between 12 per cent and 5.5 per cent between the years 1987 and 2007, I direct that enhanced compensation shall be paid together with interest at the rate of 8 per cent per annum from the date of claim petition till date of realisation.

28. I direct that enhanced compensation shall be paid only to the mother of the deceased, Bhagwan Devi, appellant No. 2.

29. Enhanced compensation shall be invested in a fixed deposit with a nationalised bank for a period of 5 years. Yearly, monthly or the quarterly interest accruing thereon is permitted to be withdrawn by appellant No. 2.

30. Appeal accordingly stands disposed of.

31. No costs.