

(2009) 04 DEL CK 0335
Delhi High Court
Case No: FAO No. 72 of 2002

Smt. Suraj Devi Jain
and Others

APPELLANT

Vs

Kulbir Singh and
Others

RESPONDENT

Date of Decision: April 27, 2009

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: O.P. Goyal, for the Appellant; D.K. Sharma, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 10.9.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 9,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 2.7.1984 at about 6 p.m., the deceased Sh. Champa Lal Jain was standing near police post and making some enquiry from the policeman on duty, when a taxi bearing registration No. DLT-5793 driven at a fast speed rashly and negligently by respondent No. 1 came there from the direction of Palam Air Port and hit him. The deceased sustained severe grievous injuries and after sometime he became unconscious and was removed to Safdarjung Hospital where he remained admitted up to 9th August, 1984 and a rod was put in left femur and skeletal traction was given for four weeks and K-nailing was done on 1.8.1984 under general anesthesia. It is further alleged that he was taken to Safdarjung Hospital about ten times in Taxi or Ambulance. Sh. Champa Lal Jain expired on 30/1/1985 while undergoing treatment for recovery from injuries sustained in the said accident.

4. A claim petition was filed on 3.12.1984 and an award was passed on 10.9.2001. Aggrieved with the said award enhancement is claimed by way of the present

appeal.

5. Sh. O.P. Goyal, counsel for the appellants contended that the tribunal erred in not awarding compensation towards expenses incurred on the treatment of Sh. Champa Lal Jain and also towards loss of earning suffered by the appellants after his untimely death due to the injuries received by him in this accident. The counsel contended that the tribunal erred in not awarding compensation towards loss of love & affection, funeral expenses and loss of consortium,.

6. Per contra, Mr. D.K. Sharma, counsel appearing for the respondent refuted the submission made by the counsel for the appellants. He contended that the Award made by the Tribunal is just and fair and there is no need to interfere with the findings given by the Tribunal.

7. I have heard the learned Counsel for the parties and perused the record.

8. The appellants seek compensation of Rs. 1,800/- for conveyance expenses; Rs. 1,000/- for medicines; Rs. 450/- for purchase of blood; Rs. 7,00/- for purchase of rod; Rs. 5,00/- for special diet; Rs. 40/- per day and a sum of Rs. 2,000/- for first two months towards physiotherapy; Rs. 10,000/- for attendant charges; Rs. 70/- for purchase of crutches and Rs. 70/- for purchase of iron rods.

9. Pw6 Dr. A.K. Singh deposed that the deceased underwent surgery after fracture of thigh bone left side and was discharged on 4/8/1984. He further deposed that on 12/12/1984 he was readmitted for partial hemi arthroplasty on 29/1/1985 and had cardiac arrest and was declared dead on 30/1/1985 as per Ex. PW6/1 the admission and discharge record, the deceased had a history of roadside accident and due to it he was unable to move the left side of his thigh. As per Ex. Pw6/2 the admission and discharge record the deceased was admitted again on 12/12/1984 as he suffered intra capsular fracture of neck of left femur following a fall and suffered sudden cardiac arrest at 11:00 am on 30/1/1985.

10. The tribunal based upon the aforesaid discussion, held that the death of the deceased was result of fall which was followed by a cardiac arrest, which has no connection with the road accident. The accident took place on 2.7.1984 and for that he underwent surgery and was discharged on 4/8/1984. Now the readmission of the deceased after five months of the accident cannot be said to have connection with the accident. Be that as it may nothing came on record to prove the same. If a person's negligent act or omission was the proximate and immediate cause of death in the accident, then no compensation can be granted in this regard. Thus, the tribunal rightly did not award compensation towards loss of dependency and non-pecuniary damages for death of the deceased. Therefore, I do not find any infirmity in the said decision of the tribunal in this regard.

11. PW5 Vijay Jain deposed that his father used to earn Rs. 1,500/- to 2,000/- pm from his restaurant. He stated in his cross examination that the treatment of his

father at the hospital was free of cost.

12. The tribunal assessed the compensation towards conveyance expenses, special diet, expenses towards medicines, for purchase of blood; for purchase of rod; towards physiotherapy; for attendant charges; for purchase of crutches and for purchase of iron rods at Rs. 7,500/-. I do not feel that the same requires any interference since nothing was brought on record to prove the same. The Tribunal has given valid reasons for awarding this compensation.

13. As regards loss of income, the tribunal assessed the income of the deceased at Rs. 500/- pm for three months i.e. at Rs. 1,500/-. In this regard also no interference is warranted.

14. In view of the above discussion, no interference is made in the award.

15. Dismissed.