(2011) 09 DEL CK 0116

In the Delhi High Court

Case No : F.A.O. No. 603 of 1999

Anjana Biloha and Others — APPELLANT

Vs

R.K. Jain and Another — RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0116

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : M. Qayamuddin, for the Appellant; Shantha Devi Raman, for the Respondent No. 2, for the Respondent

Judgement

Reva Khetrapal, J.—The present appeal has been filed against the judgment and award of the Motor Accidents Claims Tribunal, Patiala House, New Delhi dated 03.08.1999 passed in Suit No. 184 of 1994 titled as "Anjana Biloha and Ors. v. R.K. Jain and Anr.", whereby a sum of Rs. 6,16,000/- was awarded to the Appellants for the untimely demise of their bread-earner, Shri Shyam Biloha.

2. Brief facts relevant for the disposal of the present appeal are that the aforesaid Shri Shyam Biloha died as a result of a motor vehicular accident which took place on 23.02.1994. A Claim Petition claiming compensation in the sum of Rs. 35,00,000/- was filed by the legal representatives of the deceased, viz. the widow, mother and daughter of the deceased against the owner-cum-driver and the insurer of the offending vehicle. The learned Tribunal after concluding that the accident was caused due to the rash and negligent driving of the offending vehicle by the Respondent No. 1, held the Appellants entitled to receive compensation in the sum of Rs. 6,16,000/- alongwith interest at the rate of 12% per annum from the date of filing of the petition till the date of realisation. Aggrieved therefrom, the Appellants have filed the present appeal seeking enhancement of the amount of compensation awarded by the learned Tribunal.

3. A perusal of the award reveals that the learned Tribunal deemed it reasonable

to assess the income of the deceased at Rs. 7,000/- per month or say Rs. 84,000/- per annum. Deducting one-third (1/3rd) therefrom towards the personal expenses of the deceased, the Tribunal assessed the annual loss of dependency of the Appellants in the sum of Rs. 56,000/- per annum. To augment the said multiplicand constituting the annual loss of dependency of the Appellants, the learned Tribunal applied the multiplier of 11, thereby computing the total loss of dependency of the Appellants in the sum of Rs. 6,16,000/- and awarded the said amount as compensation to the Appellants.

4. Mr. M. Qayam-ud-din, the learned Counsel for the Appellants, has assailed the aforesaid assessment of the quantum of compensation made by the learned Tribunal on the following grounds:

(a) The learned Tribunal erred in assessing the income of the deceased on the date of the accident at Rs. 7,000/- only and further erred in not augmenting the income of the deceased for the purpose of computation of compensation payable to his legal representatives by taking into account the future prospects of advancement in the career of the deceased.

(b) The learned Tribunal erred in deducting one-third (1/3rd) of the income of the deceased towards his personal and living expenses.

(c) The multiplier adopted by the learned Tribunal deserves to be enhanced in view of the judgment of Sarla Verma (supra) wherein it has been held that the multiplier of 13 is the appropriate multiplier where the deceased is in the age group of 46 years to 50 years.

(d) The learned Tribunal erred in not awarding any amount under the non-pecuniary heads, namely, loss of consortium, loss of love and affection and loss of estate of the deceased and also pecuniary damages towards the funeral expenses of the deceased.

5. As regards the income of the deceased, it was submitted by the learned Counsel for the Appellants in this regard that the deceased was a practicing Supreme Court advocate and his income was bound to increase as he gained experience. It was further submitted by the learned Counsel that a legal presumption of annual increments must be drawn in the case of professionals, especially lawyers whose career graph rises more substantially in the later years than in the earlier years. On the basis of the aforesaid, the learned Counsel for the Appellants prayed that 30% of the income of the deceased may be added towards the future prospects of increase in the income of the deceased, considering that the deceased was admittedly around 47 years at the time of the accident. The learned Counsel in this context relied upon the following part of the judgment of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, :

In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words Rs. actual salary'' should be read as Rs. actual salary less tax'']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be No. addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Reliance was also placed by learned Counsel upon the judgments in the cases of Harbans Lal v. Bhim Sain etc., 1977 CLJ (Civil) 259 and Smt. Sukarma Kher and Others Vs. N.K. Nagin Chander and Others, in support of his aforesaid contentions.

6. Ms. Shantha Devi Raman, the learned Counsel for the Respondent No. 2 - Insurance Company, on the other hand, sought to support the findings of the learned Tribunal. As regards the income of the deceased, Ms. Raman pointed out that the Appellants had placed on record only one assessment order viz., the assessment order pertaining to assessment year 1991-92, Ex.PW1/6, according to which the deceased had declared an income of Rs. 56,500/- for the relevant year but the same was assessed by the income tax department to be in the sum of Rs. 58,480/-. The learned Tribunal, after noting that the income of an advocate varies from time to time and No. particular income could be accepted as the true index of the earnings of an advocate, deemed it reasonable to estimate the income of the deceased at Rs. 7,000/- per month or say Rs. 84,000/- per annum after considering the prospects of increase in the income of the deceased spanning the period of three years from the date of filing of the return till the date of accident, that is, from assessment year 1991-92 till the assessment year 1994-95. On the basis of the aforesaid, Ms. Raman, the learned Counsel for the Respondent, contended that the learned Tribunal had given due consideration to the future prospects of increase in the income of the deceased and No. further enhancement in respect thereof is warranted. It is further the contention of Ms. Raman that the rate of interest of 12% per annum awarded by the learned Tribunal is on the higher side.

7. Having heard the counsel for the parties and perused the records of the Tribunal, I proceed to render my findings on the aspect of the quantum of compensation payable to the Appellants as under.

8. As regards the income of the deceased, there is on record the testimony of PW1 Smt. Anjana Biloha, widow of the deceased, who stated that the income of

the deceased who was a renowned practicing Supreme Court lawyer was Rs. 15,000/- to Rs. 20,000/- per month. PW1 has also filed on record certificate of membership of Supreme Court Bar Association of the deceased as Ex.PW1/11. It may be mentioned that the income of the deceased as mentioned in the Claim Petition is stated to be Rs. 10,000/- to Rs. 12,000/- per month. The learned Tribunal, however, relied upon the assessment order of the deceased placed on record by the widow of the deceased as Ex.PW1/6, which shows the taxable income of the deceased for the assessment year 1991-92 in the sum of Rs. 56,500/-, assessed by the income tax department as Rs. 58,480/-.

9. It is apparent from the award that the learned Tribunal while assessing the loss of dependency has taken the income of the deceased at Rs. 7,000/- per month or Rs. 84,000/- per annum. It may, however, be noted that the learned Tribunal arrived at the figure of Rs. 84,000/- per annum as the income of the deceased at the time of his demise. The said sum does not provide for the future prospects of increase in the income of the deceased, which are to be added to the income of the deceased at the time of his demise. Furthermore, there is substance in the contention of the learned Counsel for the Appellant that the income of a practicing advocate increases as the person gains experience and attains seniority.

10. In my view, therefore, the interest of justice would be served if, keeping in mind the age of the deceased, 30% is added to the income of the deceased towards the future prospects of increase in the income of the deceased. This is also in consonance with the judgment of the Supreme Court in the case of Sarla Verma (supra) which has laid down that an addition of 30% to the actual income of the deceased should be made where the deceased falls in the age group of 40 years to 50 years. The income of the deceased, for the purpose of computing the loss of dependency of the Appellants, thus, works out to Rs. 84,000/- plus 30% of Rs. 84,000/-, which equals to Rs. 1,09,200/- per annum.

11. Dealing next with the second contention of the learned Counsel for the Appellants that the deduction of one-third (1/3rd) of the income of the deceased towards his personal and living expenses is excessive, I am not in agreement with the said contention. In the case of Sarla Verma (supra), the Supreme Court has laid down that where the deceased is survived by three dependent family members, as a general rule, one-third (1/3rd) of the income of the deceased may be deducted towards his personal and living expenses. No. special circumstances have been cited by the learned Counsel for the Appellants to warrant a deviation from the aforesaid general rule.

12. The third contention of the learned Counsel for the Appellants relates to the appropriate multiplier to be adopted in the instant case. On this aspect, I am at one with the contention of the learned Counsel for the Appellants that the appropriate multiplier for augmenting the multiplicand constituting the loss of dependency of the Appellants is the multiplier of 13, in the present case, which is also the multiplier tabulated by the Supreme Court in the judgment of Sarla

Verma (supra) to be the appropriate multiplier for persons/victims falling in the age group of 46 years to 50 years. Thus calculated, the total loss of dependency of the Appellants works out to Rs. 1,09,200/- x 2/3 x 13, that is, Rs. 9,46,400/- (Rupees nine lakhs forty six thousand and four hundred only).

13. Lastly, it was contended by the learned Counsel for the Appellants that No. amount whatsoever has been granted by the learned Tribunal towards the non-pecuniary damages under the heads of loss of consortium, loss of love and affection, loss of estate and pecuniary damages towards funeral expenses of the deceased. Accordingly, a conventional sum of Rs. 5,000/- is awarded to the Appellants under each of the aforesaid four heads. The total compensation payable to the Appellants, thus, works out to Rs. 9,66,400/- (Rupees nine lakhs sixty six thousand and four hundred only).

14. The award amount is accordingly enhanced by a sum of Rs. 3,50,400/- (Rupees three lakhs fifty thousand and four hundred only). Interest on the enhanced amount shall be payable at the rate of 7.5% per annum from the date of filing of the petition till the date of realization. Respondent No. 2 is directed to deposit the enhanced compensation alongwith interest thereon within 30 days from today with the Registrar General of this Court, which shall be disbursed to the Appellants in the same ratio as the original award amount.

15. The appeal stands disposed of accordingly.

16. Records of the Tribunal be sent back forthwith.