(2012) 02 DEL CK 0563

In the Delhi High Court

Case No : MAC. App. 447 of 2011 and MAC. App. 438 of 2011

Bajaj Allianz General Ins. Co. Ltd — APPELLANT

Vs

Dharmo Devi and Others
 Smt. Dharmo Devi and Others Vs Manjeet Singh and Ors — RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0563

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Joy Basu, for MAC. app. 447/2011 and Mr. O.P. Mannie, for MAC. app. 438/2011, for the Appellant; O.P. Mannie, Advocate for R-1 to R-6 for MAC. App. 447/2011 and Mr. Joy Basu, Advocate for R-3 for MAC. App. 447/2011, for the Respondent

Judgement

G.P. Mittal, J.—These are two Cross Appeals. MAC APP.447/2011 is preferred by Bajaj Allianz General Insurance Company Limited for reduction of compensation of Rs. 17,36,824/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal). In Cross-Appeal being MAC APP.438/2011 the Appellants (who were the Claimants before the Claims Tribunal in Suit No.115/2010) seek enhancement of compensation.

2. For the sake of convenience, the Appellant in MAC APP.447/2011 who is the Respondent No. 3 in MAC APP.438/2011 shall be referred to as Insurer and the Appellants in MAC APP.438/2011 (Respondents No.1 to 6 in MAC APP.447/2011) shall be referred to as the Claimants.

3. One Daya Kishan (the deceased) who was aged about 54 years at the time of his death and was working as a Safaikaramchari in MCD, suffered fatal injuries in an accident which took place on 13.01.2010. He succumbed to the injuries on the next day.

4. The Claims Tribunal accepted the deceased''s salary to be Rs. 17,748/-; after

deducting a sum of Rs. 500/-, towards the expenses incidental to employment and one-third towards the personal living expenses, applied the multiplier of ''11'' (as the deceased was aged about 54 years) to compute the loss of dependency.

5. Following contentions are raised on behalf of the Insurer:-

(i) Deduction towards the Income Tax was not made although the deceased''s salary was taxable.

(ii) A sum of Rs. 5,000/- was being contributed towards the GPF; since this amount was not being spent by the deceased on the family members, it should have been deducted while computing the loss of dependency.

(iii) An award of Rs. 1,50,000/- towards the loss of love and affection is exorbitant and excessive.

6. On the other hand, it is urged by the learned counsel for the Claimants that considering the large family, the deduction towards the personal living expenses should have been one-fourth, and in view of the rising rate of interest grant of interest @ 7.5% per annum was low.

7. The issue is no longer res integra as held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as also in Shyamwati Sharma and Others Vs. Karam Singh and Others, , that actual salary less tax has to be taken into consideration to calculate the loss of dependency. The Claims Tribunal erred in not deducting the income tax from the deceased''s income.

8. It is true that the deceased was contributing a sum of Rs. 5,000/- per month towards GPF. In case of Shyamwati Sharma & Ors (Supra) it was held that deduction shown in the salary certificate as deduction towards GPF, Life Insurance Premium, repayment of loan, etc. should not be excluded from the income. The Claims Tribunal rightly did not deduct a sum of Rs. 5,000/- being contributed by the deceased towards GPF.

9. As far as award of a sum of Rs. 1,25,000/- towards loss of love and affection is concerned. I may mention that, where the Claimants are entitled to loss of dependency on actual basis, normally a nominal sum is awarded under the head of loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

10. The Claims Tribunal while computing the loss of dependency deducted one-third towards the personal and living expenses on the ground that the deceased''s widow and only one young married daughter were financially

dependent on the deceased. Thus, the Claims Tribunal''s finding in deducting one-third of the deceased income towards the personal and living expenses cannot be faulted.

11. As far as award of interest @ 7.5% per annum is concerned, I would not interfere with the same in view of the judgment of the Supreme Court in Sarla Verma (supra).

12. In view of the following discussion, the loss of dependency is re-assessed as Rs. 15,16,357/- (17,748/- x 12 - 6200 (income tax) x 2/3 x 11).

13. The overall compensation can be tabulated as under:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

Awarded by this Court

1.

Loss of Dependency

Rs. 15,61,824/-

Rs. 15,16,357/-

2.

Loss to Estate

Rs. 10,000/-

Rs. 10,000/-

2.

Loss to Estate

Rs. 10,000/-

Rs. 10,000/-

3.

Funeral Expenses

Rs. 5,000/-

Rs. 5,000/-

3.

Loss of Love & Affection

Rs. 1,50,000/-

Rs. 25,000/-

Total

Rs. 17,36,824/-

Rs. 15,66,357/-

14. The compensation is thus reduced from Rs. 17,36,824/- to Rs. 15,66,357/- including the interim compensation of Rs. 50,000/-.

15. Apportionment of the awarded amount amongst the Respondents No.1 to 6 shall be as under:-

Sl. No.

Name of the Respondents/Claimants

Apportioned by the Claims Tribunal

Apportioned by this Court

1.

Smt. DharmoDevi (wife)

Rs. 10,86,824/-

Rs. 10,16,357/-

2.

Babita (daughter)

Rs. 25,000/-

Rs. 25,000/-

3.

Seema (daughter)

Rs. 25,000/-

Rs. 25,000/-

4.

Sunil (son)

Rs. 25,000/-

Rs. 25,000/-

5.

Suman (unmarried-daughter)

Rs. 5,00,000/-

Rs. 4,00,000/-

6.

Harish (Son)

Rs. 25,000/-

Rs. 25,000/-

Total

Rs. 16,86,824/-

Rs. 15,16,357/-

16. The excess amount of Rs. 1,70,467/- along with interest if any, accrued during the pendency of the Appeal deposited by the Insurer shall be refunded to it. The statutory amount of Rs. 25,000/- shall also be refunded to the Appellant Insurer.

17. The amount awarded shall be disbursed / held in fixed deposit in UCO Bank, Delhi High Court Branch, New Delhi in terms of the Claims Tribunal''s order.

18. MAC APP.447/2011 filed by the Insurer is allowed in above terms.

19. MAC APP.438/2011 stands dismissed. No costs.