(2012) 10 DEL CK 0061

In the Delhi High Court

Case No : MAC. App. 189 of 2010

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Neelam @ Singara @ Shivani and Others RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2012) 10 DEL CK 0061

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

Bench : Single Bench

Advocate : Rajat Brar, for the Appellant; Minakshi Sharma, Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant Bajaj Allianz General Insurance Co. Ltd. impugns a judgment dated 08.10.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 7,13,000/- was awarded for the death of Saroj @ Suraj aged 30 years who died in a motor vehicle accident which occurred on 08.07.2008. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a halwai and earning Rs. 5,500/- per month. The Claimants examined the First Respondent as PW1 who deposed as to the manner of the accident. In the absence of any cogent evidence with regard to the deceased''s income, the Claims Tribunal took the minimum wages of an unskilled worker fixed by the Government of NCT of Delhi to compute the loss of dependency. The Claims Tribunal added 50% towards future prospects, deducted 1/3rd towards personal and living expenses and applied a multiplier of 17 relevant to the age of the deceased. The Claims Tribunal found that there was contributory negligence to the extent of 10% on the part of the deceased as he was riding as a pillion rider on the two-wheeler in addition to one more person apart from the driver. Thus, 10% of the compensation awarded was deducted.

2. The only ground raised by the Learned Counsel for the Appellant is that in the

absence of any evidence with regard to the future prospects, addition of 50% in the deceased''s income was not justified.

3. The Learned Counsel for the Claimants states that the deceased was a young person and thus addition of 50% was rightly made by the Claims Tribunal. It is urged that the Claims Tribunal fell into error in making a deduction of 10% on account of alleged contributory negligence. It is stated that the deceased Saroj was not driving the two-wheeler. It is urged that there was no negligence on the part of the two wheeler driver and even if there was any negligence, it was not a case of a contributory negligence. Reliance is placed on T.O. Anthony Vs. Karvarnan and Others, .

NEGLIGENCE:

4. The First Respondent filed her affidavit Ex. PW1/A. She testified that on 08.07.2008, she was accompanying her husband on a motorcycle No. DL-8S-AN-2833. The said motorcycle was driven by her brother Om Prakash at a normal speed in accordance with the traffic rules. When they reached the crossing on Kalidas Marg, while her brother was taking a turn, a truck No. HR-38-D-3960 which was being driven by the Respondent No. 5 in a rash and negligent manner came from behind and hit the motorcycle. The manner of the accident as stated by PW1 was not challenged in cross-examination. Only a suggestion was given that three persons were riding on the motorcycle which, of course, was admitted by the First Respondent. The First Respondent also denied the suggestion that the accident occurred on account of loss of balance by the two-wheeler driver.

5. In T.O. Anthony, the distinction between the contributory negligence and composite negligence was brought by the Supreme Court. Since the deceased Saroj himself was not responsible for the accident and the two-wheeler was being driven by Om Prakash, he cannot be said to have contributed to the accident. Otherwise also, in view of the unchallenged testimony of PW1 with regard to the manner of the accident, it cannot be said that there was any negligence on the part of the two-wheeler driver. Thus, the finding on contributory negligence reached by the Claims Tribunal cannot be sustained.

6. I am conscious of the fact that the Respondent (Claimant) has not filed any Cross-Objection. The Respondent, however, is entitled to urge any ground in order to resist an Appeal in terms of Order XLI Rule 22 CPC without filing any cross objection. A reference may also be made to a judgment of the Supreme Court in Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, . Thus, the Claims Tribunal erred in making deduction of 10% on account of the alleged contributory negligence on the part of the deceased.

QUANTUM:

7. In order to prove the income of deceased Saroj @ Suraj, the First Respondent filed her own Affidavit Ex. PW-1/A. She testified that the deceased was working as a Halwai and was earning Rs. 5,500/- per month. In cross-examination, the

deceased''s profession as Halwai was not challenged. However, his income of Rs. 5,500/- per month was disputed. The Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of dependency. Since the deceased was working as Halwai it was appropriate to take minimum wages of a skilled worker to compute the loss of dependency. The Minimum Wages of a skilled worker on the date of the accident were Rs. 4057/- per month.

8. Admittedly, there was no evidence with regard to the deceased''s future prospects. In the circumstances, the Claims Tribunal was not justified in making addition of 50%. Rather, only an addition of 30% should have been made towards inflation on the basis of the Supreme Court judgment in Santosh Devi Vs. National Insurance Company Ltd. and Others, . The loss of dependency thus comes to Rs. 7,17,277/- (Rs. 4057/-+ 30% x 12 x 2/3 x 17).

9. The Claims Tribunal further awarded a sum of Rs. 50,000/- towards non-pecuniary damages. The amount of Rs. 7,13,000/- awarded by the Claims Tribunal is slightly less than the amount which has been computed above. Therefore, it cannot be said that the compensation awarded is exorbitant or excessive.

10. The Appeal, therefore, has to fail; it is accordingly dismissed.

11. The amount of compensation deposited shall be released in favour of the Claimants in terms of the orders passed by the Claims Tribunal.

12. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.

