

(2012) 04 DEL CK 0272

In the Delhi High Court

Case No : MAC App. No. 994 of 2011

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

Neeru Sain and Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Citation : (2012) 130 DRJ 561

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

Bench : Single Bench

Advocate : Joy Basu with Ms. Ruchi Bharda Jain, for the Appellant; Kundan Kumar Lal, Advocate for the Respondents No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 23,83,916/- awarded by the Claims Tribunal for the death of Veer Sain, who died in a motor accident which occurred on 19.08.2010. The following contentions are raised on behalf of the Appellant:

(i) The deceased's widow was entitled to a pension of about Rs. 11,000/- per month and the same was liable to be deducted from the deceased's salary for the purpose of computing the loss of dependency.

(ii) The deceased was aged 53 years on the date of the accident. The Claims Tribunal erred in adopting a multiplier of 9. Since the deceased was to retire in another seven years, multiplier of 7 should have been adopted.

(iii) The Claims Tribunal erred in not making the statutory deduction towards liability of Income Tax.

(iv) The compensation of Rs. 1 lakh awarded towards loss of love and affection is on the higher side, it needs to be reduced.

2. The factum of deduction of pension from the amount of compensation was considered by the Full Bench of this Court in Delhi Transport Corporation Vs. Mrs.

Meena Chaturvedi and Others, The Full Bench considered the judgment in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, and held that it was not permissible to deduct the amount of family pension from the compensation payable to the legal representatives of the deceased.

3. As far as adoption of multiplier is concerned, the instant case is squarely covered by the judgment of the Supreme Court in Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, where the Supreme Court deprecated the practice of adopting split multiplier. Thus, normally the multiplier has to be applied as per the age of the deceased irrespective of the date of the superannuation. Thus, there is no fault in adopting the multiplier of 9 as taken by the Claims Tribunal.

4. The salary slip Ex.PW2/2 proved that the deceased had a salary of Rs. 29,405/- which was paid in July, 2010. PW2 Hira Lal, Assistant Director, DDA testified that the deceased was given an increment w.e.f. 01.07.2010 for which the arrears on the salary were also due to the legal heirs of the deceased. This part of PW2's testimony was not challenged in cross-examination. Thus, it was established that the deceased's salary on the date of the accident was Rs. 31,165/- including Rs. 4,800/- towards House Rent Allowance (HRA). The payment of HRA being non-taxable, the liability of Income Tax comes to Rs. 18276/- only. On adopting a multiplier of 9, the loss of dependency comes to Rs. 21,34,224/- (Rs. 373980-18276= Rs. 355704X 2/3 X 9).

5. 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 v. Oriental Insurance Company Limited (2009) 17 SCC 627 granted Rs. 25,000/- (in total to all the claimants) only under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only. On adding a sum of Rs. 10,000/- each towards funeral charges, loss of consortium and loss to estate, the overall compensation comes to Rs. 21,89,224/-.

6. Thus, the overall compensation stands reduced from Rs. 23,83,916/- to Rs. 21,89,224/-.

7. The compensation of Rs. 21,89,224/- along with interest @ 7.5% per annum as awarded by the Claims Tribunal shall be released in the proportion and in the manner as directed by the Claims Tribunal. The balance sum of Rs. 1,94,692/- along with proportionate interest and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

8. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The Appeal is allowed in above terms.