(2012) 08 DEL CK 0367

In the Delhi High Court

Case No : Mac. App. 515 of 2008

Bajaj Allianz Insurance Co. Ltd. APPELLANT

Vs

Sudesh and Others RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0367

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

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant; Munish Tyagi, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 16, 52, 000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 5 for the death of Surender Singh who died in a motor vehicle accident which occurred on 13.12.2002. The finding on negligence is not disputed by the driver, owner and the Insurer. Thus, the same has attained finality.

2. The following contentions are raised on behalf of the Appellant:

(i) FIR No. 677/2002 was recorded in respect of the accident. The certified copy of the site plan prepared by the IO and the seizure memo of Matador No. DL-1LD-0610 and Qualis No. HR-55-AT-5966 would show that there was involvement of three vehicles in the accident. The testimony of PW-2 Satish Kumar is contradictory to the one made before the Criminal Court and thus PW-2 Satish Kumar should not have been believed to hold that the accident was caused by Maruti Zen No. DL-3CR-9200.

(ii) No cogent evidence was produced to prove the deceased''s income as Rs. 8500/- per month. The Claims Tribunal erred in believing the salary certificate Ex.PW-1/A. The compensation should have been awarded on the basis of minimum wages of a skilled worker.

(iii) There was no evidence with regard to the deceased''s future prospects. The Claims Tribunal fell into error in granting 50% increase towards the future prospects Reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

NEGLIENCE:

3. I have before me PW-2 Satish Kumar''s testimony made before the Claims Tribunal. He testified that on 13.12.2002 at 4:15 A.M. when he was proceeding to International Airport and had reached the red light of Mahipalpur, he saw one pedestrian crossing the road, who was hit by a Maruti Zen car No. DL-3CR-9220. The driver of the Zen car stopped and upon noticing the injured to be dead, the driver of the Zen car ran away. He chased him upto Rajokari Red light and then came back as he had to drop the passengers at IGI Airport.

4. In cross-examination, the witness deposed that though the night was foggy but the visibility was clear. Of course, PW-2 Satish Kumar''s testimony before the Court of Metropolitan Magistrate is at variance with the testimony recorded before the Claims Tribunal. Witness Satish Kumar was not cross-examined on this aspect. He was not confronted with his statement recorded in the Court of Metropolitan Magistrate. Thus, the Appellant cannot take any advantage of the alleged contradiction between the two statements.

5. ASI Mohan Singh, who investigated the criminal case was also examined as PW-3. He testified that as per his investigation the accident took place because of rash and negligent driving of Maruti Zen No. DL-3CR-9220 which was driven by Narender Singh (son of Ram Kishan). He denied the suggestion that Qualis No. HR-55-AT-5966 and Matador No. DL-1LD-0610 were involved in the accident. Nothing could be brought in his cross-examination to suggest that the investigation was not carried out by him fairly. Further, Respondents No. 6 and 7 (Respondents No. 1 and 2 before the Claims Tribunal) filed a written statement wherein they admitted the accident and put the blame solely on the deceased. They did not come forward with any plea that other vehicles were involved in the accident. Respondent No. 6 did not enter the witness box to rebut the evidence of PW-2 Satish Kumar and PW-3 ASI Mohan Singh.

6. On the basis of the material on record, the Claims Tribunal rightly reached the conclusion that the accident was caused due to rash and negligent driving of the Maruti Zen by Respondent No. 6.

7. The finding on negligence is well reasoned and is confirmed.

QUANTUM OF COMPENSATION:-

8. As far as the deceased''s income is concerned, the First Respondent (Smt. Sudesh) filed her Affidavit Ex.PW-1/A. She deposed that her husband was working as a driver with Miles Rent A Car Pvt. Ltd., 184/2, Mahipalpur Extn., New

Delhi and was getting a salary of Rs. 8500/- per month as per the certificate Ex.CW-1/A. In cross-examination, she reiterated that her husband was working in a private company. She testified that the driving licence of her husband was seized by the police. She admitted that no appointment letter has been filed by her on the record of the case. No suggestion was given to the First Respondent that her husband was not working as a driver with Miles Rent A Car Pvt. Ltd. or that he was not getting a salary of Rs. 8, 500/- per month. In the absence of any rebuttal, the Claims Tribunal was justified in accepting the deceased''s salary as Rs. 8, 500/- per month.

9. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SC 559 and held that as per Santosh Devi (supra) provided for an increase of 30% in the victims income towards inflation in case of self employed and persons having fixed income. Relevant portion of the Santosh Devi is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma''s judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

10. Thus, there would be an addition of 30% in the deceased''s income to compute the loss of dependency instead of 50% granted by the Claims Tribunal.

11. Applying the ratio of Santosh Devi, the loss of dependency comes to Rs. 14, 91, 750/- (8500/- + 30% x 3/4 x 12 x 15) as against Rs. 16, 32, 000/- awarded by the Claims Tribunal.

12. The compensation of Rs. 20, 000/- awarded towards non-pecuniary heads was on the lower side. I would make a provision of Rs. 25, 000/- towards loss of love and affection and Rs. 10, 000/- each towards loss to estate, loss of consortium and funeral expenses.

13. The overall compensation comes to Rs. 15, 46, 750/- as against Rs. 16, 52, 000/- awarded by the Claims Tribunal.

14. Thus there is reduction of Rs. 1, 05, 250/- in the compensation award. The excess amount of Rs. 1, 05, 250/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

15. The compensation awarded shall be paid to the Respondents No. 1 to 5 in terms of the order passed by the Claims Tribunal and shall be reduced proportionately.

16. The statutory deposit of Rs. 25, 000/- be refunded to the Appellant Insurance Company.

17. The Appeal is allowed in above terms. Pending Applications also stand disposed of.