
(2017) 12 DEL CK 0207

In the Delhi High Court

Case No : MAC. Appeal No. 666 Of 2016

Bharti AXA GEN INS CO Ltd

APPELLANT

Vs

Fareeda & Ors

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0207

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Mohammad Mustafa, S.N. Parashar, Pankaj Kumari

Final Decision : Partly Allowed

Judgement

J.R. Midha, J

1. The appellant has challenged the award dated 7th April, 2016 passed by the Claims Tribunal. The appellants are seeking reduction of the award amount.

2. On 23rd June, 2011 at about 2:30 a.m., the deceased, Kosar was driving truck No.UP-12T-3151 while going from Gazipur Mandi to Karana when an Eicher Canter No.HR-38N-4511 going ahead of the vehicle suddenly stopped without giving any indication due to which the truck dashed into the canter which resulted in fatal injuries to Kosar. The deceased was survived by his widow, two sons, two daughters and father who filed an application for compensation before the Claims Tribunal.

3. The deceased was working as a driver. It was claimed that the deceased was earning Rs.10,000/- per month apart from food and other allowances of Rs.4,000/-. The Claims Tribunal took the income of the deceased equivalent to minimum wages of Rs.6422/- of an unskilled worker, added 50 % towards future prospects, deducted 1/4th towards personal expenses and applied multiplier of 17 to compute the loss of dependency as Rs.14,73,900/-. The Claims Tribunal awarded Rs.1,00,000/-towards loss of love and affection, Rs.1,00,000/- loss of

consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.17,08,900/-.

4. Learned counsel for the appellant urged at the time of hearing that the deceased was contributory negligent and therefore, the compensation is liable to be reduced on account of contributory negligence. It is further submitted that the addition of 50% towards future prospects be set aside. It is further submitted that the compensation under the heads of loss of consortium, loss of love and affection and loss of estate be reduced. It is submitted that the deceased was not holding a driving licence at the time of accident.

5. Learned counsel for the respondents No.1 to 6 submits that the deceased was earning Rs.10,000/- per month plus food charges of Rs.4,000/- which should be taken in to consideration to compute the loss of dependency. It is submitted that the deceased was holding a driving licence which is in the Trial Court record. The original driving licence has been shown by the claimants to the Court at the time of hearing.

6. On careful consideration of the rival contentions of the parties, this Court is of the view that the deceased was contributory negligent to extent of 40%. With respect to the occupation and income of the deceased, it is on record that the deceased was driving the truck at the time of the accident. PW-1 deposed that the deceased was earning Rs.10,000/- per month. The Claims Tribunal has added 50% towards future prospects which is liable to be reduced to 40% according to the recent judgment of the Supreme Court in National Insurance Company Limited v. Pranay Sethi, 2017 SCC OnLine SC 1270. The Claims Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium and Rs.10,000/- towards loss of estate. The compensation under the heads of loss of love and affection is fair and reasonable considering the deceased has left behind six dependents. The compensation under the head of loss of consortium is reduced from Rs.1,00,000/- to Rs.40,000/-.

7. Taking the income of deceased as Rs. 10,000/-, adding 40% towards future prospects, deducting 1/4 towards personal expenses and applying the multiplier of 17, the loss of dependency is computed as Rs.21,42,000/- Adding Rs.1,00,000/- towards loss of love and affection, Rs.40,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses, the total compensation is computed as Rs.23,17,000/-. Since the deceased was contributory negligent to the extent of 40%, the claimants are entitled to 60% of the above compensation i.e. Rs.13,90,200/- [Rs.23,17,000 - Rs.9,26,800 (40%)].

8. The appeal is partly allowed and compensation amount is reduced from Rs.17,08,900/- to Rs.13,90,200/- along with interest @ 9% per annum from the date of filing of the claim petition till realization.

9. The appellant has deposited Rs.10,00,000/- along with interest @ 9% with UCO Bank, Delhi High Court Branch in terms of the order dated 5th September,

2016. The appellant is directed to deposit the balance amount with UCO Bank, Delhi High Court Branch within four weeks.

10. List for disbursement of the compensation amount to claimants/respondents No.1 to 6 on 30th January, 2018.

11. The respondents No.1 and 6 are present in Court along with passbook of their saving bank accounts. Respondents 1 and 6 are directed to open their saving bank accounts near the place of their residence or transfer the existing savings bank account with UCO Bank, Delhi High Court Branch to the UCO Bank, Muzaffarnagar Branch. UCO Bank, Muzaffarnagar Branch is directed not to issue any cheque book and/or debit card to respondents No.1 and 6 and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbooks that no cheque book or debit card shall be issued to respondents No.1 and 6 without the permission of this Court. Respondents No.1 and 6 shall produce the copy of this order before the UCO Bank, Muzaffar Nagar Branch whereupon the bank shall make an endorsement on the passbook. Respondents No.1 and 6 shall produce the original passbook with the necessary endorsement on the next date of hearing.

12. Statutory deposit be refunded back to the appellant after the deposit of the balance amount.

13. Copy of this judgment be given dasti to learned counsels for the parties under signature of Court Master.