(2012) 04 DEL CK 0154

In the Delhi High Court

Case No : FAO NO.459 of 1998

Champa Gulati and Others APPELLANT

Vs

Davinder Singh and Others RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:
Income Tax Act, 1961 — Section 143(1)

Citation : (2013) ACJ 1712

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

Bench : Single Bench

Advocate : M.L. Mahajan and Mr. Gaurav Mahajan, for the Appellant; Kanwal Chaudhary, for R-3., for the Respondent

Judgement

J.R. MIDHA

1. The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs. 1,00,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount. The accident dated 4th May, 1989 resulted in the death of K.D. Gulati. The deceased was survived by his widow, one son and a daughter who filed the claim petition before the Claims Tribunal. The deceased was aged 48 years at the time of the accident and was working as a Managing Director of M/s Anchal Chit and Finance Private Limited drawing a salary of Rs. 7,500/- per month. The Claims Tribunal took the minimum wages of Rs. 750/- per month into consideration, added 50% towards the future prospects, deducted 1/3rd towards the personal expenses and applied the multiplier of 12 to compute the loss of dependency at Rs. 90,000/-. The Claims Tribunal has awarded Rs. 2,000/- towards funeral expenses, Rs. 2,500/- towards loss of estate and Rs. 5,000/- towards loss of love and affection. The total compensation awarded is rounded off to Rs. 1,00,000/-

2. The learned counsel for the appellants has urged following ground at the time of hearing of this appeal:-

(i) The income of the deceased be taken as Rs. 7,500/- per month.

(ii) The multiplier be enhanced from 10 to 13.

(iii) The compensation be awarded for loss of consortium.

(iv) The interest be awarded from the date of filing of the claim petition.

3. With respect to the income of the deceased, the appellants proved the certificate of the Chartered Accountant before the Claims Tribunal as Ex.PW1/1. In the said certificate, the Chartered Accountant certified that the deceased was working as a Managing Director of M/s Anchal Chit and Finance Private Limited and he drew a salary of Rs. 7,500/- per month for the month of April, 1989. It was further certified that the deceased received Rs. 90,000/- during the period 1st April, 1988 to 31st March, 1989. The Claims Tribunal disregarded the certificate on the ground that the better evidence could have been produced by the appellants.

4. Vide order dated 20th March, 2009, the appellants were permitted to lead additional evidence to prove the occupation and income of the deceased in pursuance to which the appellants filed additional evidence of Champa Gulati, AW-1 who proved the original Income Tax Assessment Order Ex.AW1/1 which reflected the income of the deceased as Rs. 88,190/- for the year ending 31st March, 1988. The respondent in rebuttal summoned the Income Tax records of the deceased K.D. Gulati for the year 1987-88 and 1988-89 in pursuance to which Mr. K.C. Sharma, Income Tax Officer appeared on 20th April, 2010 and stated that the said records, being very old, were not traceable. On 22nd September, 2011, Mr. Piyush Srivastav, Inspector from Income Tax Office appeared along with a written communication of the Income Tax Officer dated 21st September, 2011 to the effect that the said records were not traceable.

5. The Claims Tribunal has taken the minimum wages of Rs. 750/- per month into consideration as income of the deceased. This Court is of the view that the Claims Tribunal was not justified in taking the minimum wages into consideration as there was sufficient evidence on record to prove that the deceased was a Managing Director of a Private Limited Company. The appellants have placed on record the original Income Tax Assessment Order Ex.AW1/1 according to which the total income of the deceased u/s 143(1) of the Income Tax Act was Rs. 88,190/-. The Income Tax limit during the relevant period was Rs. 18,000/- and therefore, Rs. 24,526/- is deducted towards the Income Tax and the income of the deceased for computation of compensation is taken to be Rs. 5,305/- per month [(Rs. 88,190 - Rs. 24,526)/12].

6. The Claims Tribunal has applied the multiplier of 10 whereas the appropriate multiplier at the age of 48 years according the judgment of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The multiplier is, therefore, enhanced from 10 to 13.

7. The Claims Tribunal has not awarded any compensation for loss of consortium.

Rs. 10,000/- is awarded towards loss of consortium. The Claims Tribunal has not awarded interest from the date of filing of the claim petition up to the date of realization. The interest at the rate of 7.5% per annum is awarded from the date of filing of the claim petition till realization.

8. The appellants are entitled to total compensation of

Rs. 5,71,220/- as per the break-up given hereunder:-

(i) Income of the deceased (per month) Rs. 5,305/-

(ii) Less : personal expenses (1/3rd) Rs. 1,768/-

(iii) Annual income Rs. 42,440/-

(iv) Total loss of dependency (multiplier of 13) Rs. 5,51,720/-

(v) Funeral expenses Rs. 2,000/-

(vi) Loss of Estate Rs. 2,500/-

(vii) Loss of love and affection Rs. 5,000/-

(viii) Loss of Consortium Rs. 10,000/- Total Rs. 5,71,220/-

9. The appeal is allowed and the award amount is enhanced from Rs. 1,00,000/- to Rs. 5,71,220/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. The share of the three appellants in the award amount shall be equal.

10. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Champa Gulati within 30 days.

11. Upon deposit of the award amount, the UCO Bank shall release 1/3rd (1/9th of the total enhanced award amount)of the share of each of the three appellants in the enhanced award amount. The remaining award amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 1/3rd of the share of each of the appellants (1/9th of the total enhanced award) for a period of 21/2 years in the name of each of the three appellants.

(ii) Fixed deposit in respect of 1/3rd of the share of each of the appellants (1/9th of the total enhanced award) for a period of five years in the name of each of the three appellants.

12 The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiaries.

13 Withdrawal from the aforesaid account shall be permitted to the beneficiaries after due verification and the Bank shall issue photo Identity Card to the beneficiaries to facilitate identity.

14 No cheque book be issued to the beneficiaries without the permission of this Court.

15 The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FD Rs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiaries.

16 No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

17 Half yearly statement of account be filed by the Bank in this Court.

18 On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

19. The beneficiaries shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345). Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345)

