(2007) 12 DEL CK 0103

In the Delhi High Court

Case No : MAC App. No. 680 of 2007

Chand Malik and Another — APPELLANT

Vs

Govind Dutt Sharma and Another — RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 12 DEL CK 0103

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Pradeep Gaur, for the Respondent

Judgement

Kailash Gambhir, J.—Respondent No. 1 is the driver of the offending vehicle. Since the main contestant is insurance company, Therefore, notice on the respondent No. 1 is dispensed with.

2. The present appeal has been filed by the appellant seeking modification of the impugned award only to the extent of setting aside the finding of the tribunal taking into consideration 2/3rd income of the deceased towards the personal expenses after his marriage.

3. The present appeal can be disposed of at this stage itself, since a short controversy is involved in the matter.

4. Admit.

5. Counsel for the appellant contends that under the Second Schedule of the Motor Vehicles Act the personal expenses from the income of the deceased has to be reduced to 1/3rd. Counsel further contends that the finding of the Tribunal deducting 2/3rd of the income towards personal expenses after the purported marriage of the deceased is in blatant violation of the mandate of the statute.

6. Mr. Gaur, counsel for the respondent on the other hand refutes such submissions of the counsel for the appellant. Mr. Gaur contends that already the

Tribunal has assessed the income of the deceased on the basis of the minimum wages although the appellants have failed to prove on record any income of the deceased. Counsel also contends that in such circumstances u/s 163-A of the Motor Vehicles Act, the notional income of the deceased at Rs. 15,000/- per annum should have been taken into consideration. Counsel further contends that there is no infirmity in the impugned award so far as the deduction of 2/3rd income towards personal expenses is concerned as after the marriage, personal expenses are bound to increase. Counsel for the respondent further contends that at best 50% of the income could be deducted towards personal expenses in view of the various pronouncements of the Apex Court in such matters.

7. I have heard counsel for the parties.

8. Perusal of the award shows that the deceased was a young boy of 19 years of age who died in the accident. The claim petition invoking Section 163-A of the Motor Vehicles Act was filed by the appellants. It is correct that the appellants did not file any document to prove that the deceased was earning a sum of Rs. 39,000/- per annum. However, in any event of the matter, the appellants did prove the fact that the deceased was doing welding work prior to the date of the accident. In such circumstances only the Tribunal had taken resort to the Minimum Wages Act for assessing the income of the deceased, which otherwise falls below Rs. 40,000/- per annum. Therefore, the Second Schedule of the Motor Vehicle Act is applicable in such a case. The contention of the counsel for the respondent is Therefore, rejected. As regards the contention of the counsel for the respondent that the Tribunal has rightly taken into consideration 2/3rd income towards personal expenses or at best the deduction could have been 50% towards personal expenses after his marriage, I find the same to be devoid of any merit as the claim petition was filed by the appellants u/s 163-A of the Motor Vehicles Act in which it is clearly stated that the personal expenses shall be reduced only by 1/3rd from the income of the deceased. Therefore, the impugned award to that limited extent is set aside. The expenses of the deceased for the entire multiplier shall be taken to be 1/3rd instead of 2/3rd for a period of six years.

9. In the light of the above discussion, the total award amount of Rs. 3,53,000/- shall be payable by the respondent insurance company to the appellants. Counsel for the appellants states that respondent No. 2 has already paid the said amount of Rs. 2,75,000/-. Let differential amount be also paid along with up-to-date interest @7.5% p.a. from the of filing of the petition till its realisation.

10. Appeal stands disposed of.

