(2010) 06 DEL CK 0043

In the Delhi High Court

Case No : MAC. App. 277 of 2009

Deep Mala Singh and Others	APPELLANT
Vs	
Mohan Kant Jha and Others	RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Citation : (2010) 06 DEL CK 0043

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

Bench : Single Bench

Advocate : Manjit Chawla, for the Appellant; Atul Nanda, Ms. Rameeza Hakeem, Gaurav Gupta, Sumeer Sodhi, Ms. Malika Gahlot, Ms. Sugandha and Mr. Sanjay Bhardwaj 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. 1,24,861/- and monthly payment of Rs. 3,750/- has been awarded to the appellants.

2. The accident dated 6th December, 2006 resulted in the death of Amar Singh. The deceased was survived by his widow, two minor children and mother who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 28 years at the time of the accident and was self-employed. The deceased was working as a collection/investigation agent with S. Sabharwal & Co. The witness from S. Sabharwal & Co. appeared in witness box as PW-3 and produced the record of the payments made to the deceased as Ex.PW3/A. According to Ex.PW3/A, Rs. 9,370/- was paid as collection charges in the month of May, 2006, Rs. 10,985/- in June, 2006, Rs. 9,875/- in July, 2006, Rs. 11,965/- in August, 2006, Rs. 10,325/- in September, 2006, Rs. 11,875/- in October, 2006, Rs. 7,250 in November, 2006 and Rs. 6,820/- in December, 2006. The average for the eight months was Rs. 9,808.12 per month. The Claims Tribunal disregarded the said evidence and took the minimum wages of Rs.

3,726/- per month, added 50% towards increase in minimum wages, deducted 1/3rd towards personal expenses and awarded Rs. 1,250/- per month to the widow, Rs. 1,250/- to the mother and Rs. 625/- to each of the two children. The Claims Tribunal also awarded Rs. 80,000/- towards loss of love and affection, Rs. 20,000/- towards funeral expenses and Rs. 24,861/- towards medical expenses.

4. The learned counsel for the appellant has urged following grounds at the time of hearing of this appeal:-

(i) The lump-sum compensation be awarded according to the principles laid down by the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

(ii) The income of the deceased be taken as Rs. 8,000/- per month.

(iii) The personal expenses of the deceased be reduced from 1/3rd to 1/4th.

(iv) The multiplier of 17 be applied.

(v) The compensation for loss of consortium and loss of estate be awarded.

5. The learned counsel for respondent No. 3 submits that respondent No. 3 has filed cross-objections praying that lump-sum compensation be awarded to the appellants instead of periodical payments. The learned counsel for respondent No. 3 further submits that the compensation for loss of love and affection is on a higher side and should be reduced.

6. The Claims Tribunal has awarded monthly payment to the claimants instead of lump sum amount following the judgment of this Court in the case of United India Insurance Company Ltd. Vs. Reeta Devi, MAC.APP. No. 651/2007 decided on 4th November, 2008, which has been set aside by the Hon''ble Supreme Court vide order dated 22nd February, 2010 in Civil Appeal No. 15796/2009 titled Reeta Devi Vs. United India Insurance Company Ltd. The Hon''ble Supreme Court held that the compensation by way of monthly installments would not be proper and instead the lump sum compensation be awarded to the claimants. Following the order of the Hon''ble Supreme Court, the finding of the Claims Tribunal awarding monthly installment to the appellants is set aside. It is held that the lump sum compensation according to the principles laid down by the Hon''ble Supreme Court in the case of Sarla verma (supra) would be appropriate in the facts of this case.

7. The deceased was aged 28 years at the time of the accident and was survived by his widow, mother and two minor children. The deceased was self-employed. According to the judgment of the Hon''ble Supreme Court in the case of Sarla Verma (Supra), the appropriate multiplier at the age of 28 is 18, the appropriate deduction towards personal expenses is 1/4th and no future prospects are permissible in respect of self-employed persons. The deceased had average collection of Rs. 9,808/- during the period of eight months as per Ex.PW3/A which is taken as the income of the deceased. Taking the income of the deceased

as Rs. 9,808/- , deducting 1/4th towards personal expenses of the deceased and applying the multiplier of 18, the loss of dependency of the appellants is computed to be Rs. 15,88,896/- (Rs. 9,808 x 12 x 3/4 x 18).

8. The Claims Tribunal has awarded Rs. 80,000/- to the appellants towards loss of love and affection. However, no compensation has been awarded for loss of consortium and loss of estate. The compensation of Rs. 80,000/- towards loss of love and affection is on a higher side and is reduced to Rs. 10,000/- . Rs. 10,000/- is awarded to the appellants towards loss of consortium and further Rs. 10,000/- towards loss of estate.

9. The appellants are entitled to compensation of Rs. 16,63,757/- (Rs. 15,88,896/- towards loss of dependency, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of consortium and Rs. 10,000/- towards loss of estate, Rs. 20,000/- towards funeral expenses and Rs. 24,861/- towards medical expenses).

10. The appeal as well as the cross-objections are allowed and the award of Rs. 16,63,757/- along with interest thereon @ 7.5% from the date of filing of the petition till realization is passed in favour of the appellants and against respondent No. 3.

11. The learned counsel for respondent No. 3 submits that Rs. 1,28,000/- has been deposited with the Claims Tribunal towards the compensation for loss of love and affection, funeral expenses and medical expenses. The learned counsel for respondent No. 3 further submits that interim award of Rs. 50,000/- has also been paid to the claimants. The aforesaid payments shall be adjusted by respondent No. 3 while depositing the balance award amount.

12. Appellant No. 1 is present in Court and she submits that she is not staying with appellant No. 4. Appellant No. 1 is staying with her father and has no source of livelihood. Appellants No. 2 and 3 aged nine and four and a half years respectively are staying with appellant No. 1.

13. The award amount along with up to date interest, after adjustment of the amounts already deposited including the interim award amount, be deposited by respondent No3 with UCO Bank, A/c. Deep Mala Singh, Delhi High Court Branch within 30 days.

14. Upon the aforesaid amount being deposited, UCO Bank is directed to release 5% of the amount to appellant No. 1 and 5% to appellant No. 4 by transferring the same to their savings bank accounts. The remaining amount be kept in the fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% of the amount in favour of appellant No. 1 for a period of one year.

(ii) Fixed deposit in respect of 10% of the amount in favour of appellant No. 4 for a period of one year.

(iii) Fixed deposit in respect of 10% of the amount in favour of appellant No. 1 for a period of two year.

(iv) Fixed deposit in respect of 10% of the amount in favour of appellant No. 4 for a period of two year.

(v) Fixed deposit in respect of 10% of the amount in favour of appellant No. 1 for a period of three year.

(vi) Fixed deposit in respect of 10% of the amount in favour of appellant No. 1 for a period of four year.

(vii) Fixed deposit in respect of 20% of the amount in favour of appellant No. 2 till she attains majority.

(viii) Fixed deposit in respect of 10% of the amount in favour of appellant No. 3 till he attains majority.

15. The interest on the aforesaid fixed deposits of appellants No. 1 to 3 shall be paid monthly by automatic credit of interest in the Savings Account of appellant No. 1. However, the interest on the fixed deposits of appellant No. 4 shall be paid monthly by automatic credit of interest in the Savings Account of appellant No. 4.

16. Withdrawal from the aforesaid accounts of appellants No. 1 and 4 shall be permitted to them after due verification and the Bank shall issue photo Identity Card to appellants No. 1 and 4 to facilitate identity.

17. No cheque book be issued to appellants No. 1 and 4 without the permission of this Court.

18. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

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

21. On the request of appellants No. 1 and 4, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellants No. 1 and 4.

22. The appellants Nos.1 to 4 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

23. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

24. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400)

through the UCO Bank, High Court Branch under the signature of Court Master.

