(2009) 09 DEL CK 0207

In the Delhi High Court

Case No : FAO No. 205 of 1999

Devindera Kumari and Others — APPELLANT

Vs

DTC and Others — RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0207

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

Bench : Single Bench

Advocate : Navneet Goyal, for the Appellant; Bhakti Pasrija, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 96,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 8th October, 1985 resulted in the death of Ashok Kumar Sharma. The deceased was survived by his widow, one minor son, three minor daughters and mother.

3. The deceased was aged 38 years at the time of the accident. The deceased was carrying on the business of Railway Clearing and Forwarding Agent. The deceased was also partner in a construction firm. The income of the deceased was Rs. 2,000/- per month at the time of the accident.

4. The learned Tribunal took the income of the deceased as Rs. 1,000/- per month and deducted 1/3rd towards personal expenses and applied the multiplier of 12 to compute the loss of dependency as Rs. 96,000/-. No compensation has been awarded to the appellants towards loss of consortium, loss of love and affection, loss of estate and funeral expenses.

5. The Learned Counsel for the appellant has urged the following grounds at the time of hearing of this appeal:

(i) The income of the deceased be taken to be Rs. 2,000/- per month.

(ii) 50% of the income be added towards the future prospects of the deceased.

(iii) The personal expenses of the deceased be reduced from 1/3rd to 1/4th considering that the deceased left behind six dependents.

(iv) The multiplier be enhanced from 12 to 15.

(v) The compensation be awarded for loss of consortium, loss of love and affection, loss of estate and funeral expenses.

(vi) The interest be enhanced from 6% per annum to 9% per annum.

6. With respect to the income of the deceased, appellant No. 1, the widow of the deceased appeared in the witness box as PW-12 and deposed that the deceased was carrying on the business of Railway Clearing Agent at Chandni Chowk , Delhi and he used to give Rs. 2,000/- per month to her. PW-12 produced the Income Tax Assessment Order and Challan pertaining to years 1978-79 to 1985-86 which were exhibited as Ex.PW12/1 to Ex.PW12/10. PW-12 also produced the certificates from Rajasthan Cloth House which were exhibited as Ex.PW12/A to Ex.PW12/F. The certificates of deduction of Income Tax were exhibited as Ex.PW12/G and Ex.PW12/H.

7. Ex.PW12/1 is the assessment order dated 24th May, 1979 for the year 1978-79 and the income of the deceased has been assessed as Rs. 10,300/- on which the deceased has paid tax of Rs. 241/-. Ex.PW12/2 is the counter foil of the Self-Assessment Tax Return for the year 1979-80 whereby the deceased has paid the Income Tax of Rs. 322/-. Ex.PW12/3 is the assessment order of the deceased for the year 1981-82 whereby the income of the deceased has been assessed to be Rs. 12,300/- and the payment of Income Tax of Rs. 99/- has been recorded. Ex.PW12/4 is the notice of demand of Rs. 99/- towards the Income Tax for the year 1981-82. Ex.PW12/5 is the counter foil of the Self-Assessment Tax Return dated 17th January, 1986 for the year 1985-86 whereby the Income Tax of Rs. 2,335/- has been deposited. Ex.PW12/6 is the counter foil of the Income Tax Return dated 14th March, 1990 for the year 1985-86 whereby Income Tax of Rs. 664/- has been paid by the deceased. Ex.PW12/7 is the notice of demand of Rs. 592/- by the Income Tax Department towards the Income Tax for the year 1985-86. Ex.PW12/8 is the notice dated 23rd June, 1986 by the Income Tax Department to the deceased demanding a sum of Rs. 2,799/- towards the Income Tax for the year 1985-86. Ex.PW12/9 is the acknowledgment of the Income Tax Return of the deceased for the year 1985-86. Ex.PW12/10 is the assessment order of the deceased for the year 1985-86 whereby the total income of the deceased has been assessed at Rs. 24,300/-. Ex.PW12/A to Ex.PW12/D are the statements of account of the deceased issued by Rajasthan Cloth House certifying the amount of deposit of the deceased with them and the interest paid by them to the deceased. Ex.PW12/G is Form 19A certifying the deduction of Rs. 525/- towards the Income Tax from the interest amount paid to

the deceased by Rajasthan Cloth House. Ex.PW12/H is Form 19A in respect of the deduction of Income Tax from the interest paid by M/s Srimander Dass Moti Lal to the deceased.

8. The witness from Bank of Rajasthan, Fatehpur, Delhi appeared before the learned Tribunal as PW-6 and produced the record of Saving Bank Account No. 2764 operated by the deceased from 1982-85. The certified copy of the bank account was exhibited as Ex.PW6/1.

9. The witness from Rajdhani Chitfund Pvt. Ltd. appeared before the learned Tribunal as PW-7 and produced the passbook in respect of the chit given to the deceased in 1978. PW-7 deposed that the deceased used to contribute Rs. 1,000/- per month till 1982.

10. The partner M/s Ramjeshwar Dass Sri Kishan appeared before the learned Tribunal as PW-8 and produced the copy of the confirmation letter given to the deceased which was exhibited as Ex.PW8/1. PW-8 deposed that he had taken a deposit for Rs. 10,000/- by cheque from the deceased on 8th January, 1983 and the said amount was returned on 5th April, 1983 along with interest by means of a cheque.

11. The accountant of M/s Basant Lal Saraff appeared before the learned Tribunal as PW-9 and deposed that the deceased had deposited a sum of Rs. 10,000/- with the firm in 1983 by means of a cheque on interest @18% per annum and this amount was returned on 5th April, 1983 along with interest. PW-9 produced the ledger account which contained the entry of the deposit of the deceased. The witness proved the copy of the ledger account - Ex.PW9/1 which contained the entry of the deposit. The witness produced the copies of the ledger account - Ex.PW9/1 and Ex.PW9/2 which contained the relevant entries.

12. The brother of the deceased appeared in the witness box as PW-9A and deposed that the deceased was Railway Clearing and Forwarding Agent. PW-9 deposed that the deceased was also partner in M/s Rohit Construction and his income was Rs. 2,000/- per month.

13. The accountant of M/s Srimander Dass Moti Lal appeared in the witness box as PW-10 and deposed that the deceased had deposited Rs. 25,000/- with the firm by a cheque dated 18th September, 1982 and the said amount was returned on 21st May, 1982 by means of a cheque along with interest. The witness produced the copy of the ledger account of the firm which was proved as Ex.PW10/1.

14. The witness from the firm M/s Ram Sewak Hari Ram appeared before the learned Tribunal as PW-11 and produced the ledger account of the firm. The deceased had deposited Rs. 10,000/- with the firm on 18th January, 1982 by means of a cheque which was returned along with interest on 23rd April, 1982. The copies of the relevant ledger account were proved as Ex.PW11/1 to Ex.PW11/3.

15. There is sufficient evidence on record that the deceased had good income from the business carried on by him. The deceased had been regularly investing the money at various places and was earning interest thereon. The interest on those deposits would certainly accrue to the appellants and, therefore, the income by way of interest is not being taken into consideration but the deposits being made by the deceased clearly show that the deceased had sufficient income and after meeting his personal expenses and expenditure on the family, he was able to save sufficient money for deposit. As per the Income Tax Return for the year 1985-86, the Income Tax of Rs. 2,335/- has been deposited which has been disregarded by the learned Tribunal on the ground that this return was filed after the date of death of the deceased. The reason given by the learned Tribunal to disregard this evidence is not correct. If the income accrued with respect to the income of the deceased during the current year before the date of filing of the return, the Income Tax Return has to be filed after his death and this cannot be a ground for disregarding the income. The Learned Counsel for the respondent submits that though the deceased paid Income Tax during the period 1978-82, no Income Tax was paid during the period 1982-85 and, therefore, the income of the deceased should be taken according to the Income Tax Return for the year 1981-82. Considering the abundant evidence on record duly supported by the testimonies of the witnesses, the income of the deceased is taken to be Rs. 2,000/- per month. The Learned Counsel for the appellant submits that the future prospects should also be taken into consideration. However, according to the recent judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the future prospects on the business income is not permissible and, therefore, the claim of future prospects is rejected.

16. The deceased was aged 38 years at the time of the accident and has left behind six dependants. According to the judgment of the Hon''ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation (supra), the appropriate multiplier at the age of 38 years is 15 and the appropriate deduction towards personal expenses is 1/4th considering the deceased has left behind six dependants. Following the aforesaid judgment, the multiplier is enhanced from 12 to 15 and the personal expenses of the deceased are reduced from 1/3rd to 1/4th.

17. Taking the income of the deceased to be Rs. 2,000/- per month, deducting 1/4th towards personal expenses and applying the multiplier of 15, the loss of income of the appellants is computed to be Rs. 2,70,000/- (Rs. 2,000 x 3/4 x 12 x 15).

18. The learned Tribunal has not awarded any compensation towards loss of consortium, loss of love and affection, loss of estate and funeral expenses. Rs. 10,000/- is awarded towards loss of consortium, Rs. 10,000/- towards love and affection, Rs. 5,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. The total compensation is computed to be Rs. 3,00,000/- (Rs.

2,70,000 + Rs. 10,000 + Rs. 10,000 + Rs. 5,000 + Rs. 5,000).

19. The learned Tribunal has awarded interest @6% per annum which is not disturbed on the original award amount of Rs. 96,000/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

20. The appeal is allowed and the award amount is enhanced from Rs. 96,000/- to Rs. 3,00,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

21. The enhanced award amount along with interest be deposited by the respondent with UCO Bank A/c Devendra Kumari, Delhi High Court Branch within 30 days.

22. The order with respect to disbursement of the award amount shall be passed on the next date of hearing after examining the appellants who are directed to remain present in the Court on the next date of hearing.

23. List for directions on 27th October, 2009.

