(2009) 04 DEL CK 0378

In the Delhi High Court

Case No : Mac. App. 4 of 2007

Girish Kumar Kanojia and Others APPELLANT

Vs

Vinod Kumar and Others RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0378

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

Bench : Single Bench

Advocate : Anil Garg, for the Appellant; Varun Hans, for R-1 and S.L. Gupta, for R-3, for the Respondent

Judgement

J.R. Midha, J.—1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 3,20,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 17th May, 2000 resulted in the death of Shyam Lal Kanojia aged 44 years. The deceased was survived by his widow, two sons and a daughter who filed claim petition before the learned Tribunal. The deceased was working as supervisor with a dry cleaning shop and was earning Rs. 4,000/- per month. The learned Tribunal took the income of the deceased equal to the minimum wages of Rs. 2,500/- per month. 1/3rd deducted towards the personal expenses of the deceased and the multiplier of 15 was applied to compute the loss of dependency at Rs. 3 Lakh. Rs. 5,000/- was awarded towards loss of love and affection and Rs. 10,000/- towards loss of consortium and Rs. 5,000/- has been awarded for funeral expenses. The total compensation awarded is Rs. 3,20,000/-.

3. The appellants seek enhancement on the following grounds:

(i) The income of the deceased be taken to be Rs. 4,000/- proved by sufficient evidence.

(ii) The future prospects of the deceased be taken into consideration.

(iii) The personal expenses of the deceased be deducted at the rate of 1/4th instead of 1/3rd considering the number of dependent family members of the deceased.

4. With respect to the income of the deceased, the appellant produced three witnesses. PW- 1 is the employer of the deceased who deposed that the deceased was working with him as supervisor at a salary of Rs. 4,000/- per month for the last 5 - 6 years. He further deposed that the deceased joined at a salary of Rs. 2.500/- per month and was given annual increments and his salary would have increased if he had not died in the accident in question. The landlord of deceased also appeared in the witness box as PW- - 3 and deposed that the deceased was his tenant and was paying monthly rent of Rs. 1,400/- per month. The deceased''s son appeared in the witness box and deposed that the deceased was working as supervisor in a dry cleaning shop and was earning Rs. 4,000/- per month. He further deposed that his father was also maintaining the bank account.

5. There is sufficient evidence on record that the deceased was working as supervisor in dry cleaning shop and was earning Rs. 4,000/- per month for the last 5 - 6 years. The deceased had joined at a salary of Rs. 2,500/- per month which has gradually increased and same would have further increased.

6. Considering the age of the deceased, the future prospects are taken into consideration by adding 30% of the salary as future prospects and the average income of the deceased is taken to be Rs. 5,200/- per month (Rs. 4,000 + 30% of Rs. 4,000).

7. The learned Tribunal has deducted 1/3rd towards the personal expenses of the deceased. The deduction of 1/3rd is not a thumb rule where the number of dependent legal representatives of the deceased are more than 3 and upto 6, the deduction of 1/4th towards the personal expenses is fair and reasonable. The personal expenses of the deceased are, therefore, taken to be 1/4th instead of 1/3rd.

8. The loss of dependency of the deceased is computed to be Rs. 7,02,000/- (Rs. 3,900 X 12 X 15).

9. The learned Tribunal has fairly awarded Rs. 5,000/- towards loss of love and affection, Rs. 10,000/- towards loss of consortium and Rs. 5,000/- towards funeral expenses. The total compensation to the appellants is computed at Rs. 7,22,000/- (Rs. 7,02,000 + Rs. 5,000 + Rs. 10,000 + Rs. 5,000).

10. The appeal is allowed. The compensation awarded to the claimants is enhanced from Rs. 3,20,000/- to Rs. 7,22,000/- along with interest thereon at the rate of 7.5% per annum from the date of filing of the petition till payment.

11. The shares of the appellant in the award amount shall be as under:

Appellant No. 4 : 70% Appellant Nos. 1 to 3 : 10% each.

12. Respondent No. 3 is directed to deposit the enhanced amount along with interest with the learned Tribunal within 30 days.

13. Upon such deposit being made, the learned Tribunal is directed to release 10% of the enhanced award amount along with interest to each of the appellants. With respect to appellant No. 4, 60% of the enhanced award amount along with proportionate interest thereon shall be kept in fixed deposit for a period of 5 years on which periodical interest be paid to her, but no loan, advance or premature withdrawal be permitted without prior permission to the learned Tribunal.

14. The cheque towards fixed deposit be released first and the remaining cheques be released only after the appellant No. 4 produces the original fixed deposit receipts and the duly attested copy of the same by the bank is filed before the learned Tribunal.

15. Copy of this order be given ''Dasti'' to Learned Counsel for both the parties under signatures of Court Master.