(2012) 03 DEL CK 0426

In the Delhi High Court

Case No : MAC. APP. 11 of 2012

HDFC Ergo General Insurance Co. Ltd. — APPELLANT

Vs

Ugam Devi and Others — RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0426

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant; Basant K. Gupta and Mr. Sahil Arora, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.

C.M. APPL. 170/2012(Delay)

There is a delay of 56 days in filing the Appeal.

For the reasons stated in the application, the same is allowed.

Delay of 56 days in filing the Appeal is condoned.

The application stands disposed of.

MAC.APP. 11/2012

1. The Appellant seeks reduction of compensation of Rs. 11,76,000/- for death of Vijay Singh who died in an accident which occurred on 14.10.2009. He left behind a widow, two sons and a daughter. The deceased was aged 42 years on the date of the accident. The contentions raised on behalf of the Appellant are:

(i) No evidence was led by the Respondents to prove that the deceased had bright future prospects in spite of this 30% increase in deceased''s gross salary was made.

(ii) Compensation of Rs. 1 lac awarded towards loss of Love and Affection is excessive and exorbitant.

The Appeal is bound to succeed on both the grounds. It is well settled that in order to award addition on account of the future prospects some evidence has to be led by the legal representatives of the deceased to show that the deceased had bright future prospects. Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others,

2. In this case a witness from employer appeared and simply proved the certificate of employment Ex.PW-2/1 to show that the deceased was getting a basic salary of Rs. 4904/-, HRA Rs. 1241/- and PF Rs. 596/-. In the absence of any evidence that the deceased had bright future prospects or that he was in permanent employment it was not permissible to grant future prospects. It is submitted by the learned counsel for the Respondents that it is evident from the certificate Ex.PW-2/1 that the deceased was in permanent employment.

3. I have carefully gone through the salary certificate. It nowhere reveals that the deceased was in permanent employment. It does not even disclose the duration of the deceased''s employment. Thus the Claims Tribunal ought not to have granted addition on account of future prospects. The loss of dependency thus comes to Rs. 7,81,200/- (6200x12x3/4x14).

4. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation from Rs. 1 lac under this head to Rs. 25,000/- only.

5. The compensation awarded under other non-pecuniary Heads is not interfered as the same has not been challenged in the grounds of Appeal.

6. The overall compensation is reduced from Rs. 11,76,000 to Rs. 8,66,200/-.

7. Since, the interest rates have started firming up during the last one year and interest is being granted by Nationalized Banks @ 9% per annum on long term deposits, I would not interfere in the grant of interest @ 9% per annum by the Tribunal.

8. The excess amount along with proportionate interest and interest accrued during the pendency of the Appeal shall be refunded to the Appellant/Insurance Company. Statutory amount of Rs. 25,000/- shall also be refunded to the Appellant through its counsel.

9. The amount held payable to Respondents No. 1 and 2 shall be paid in the proportion and in the manner as directed by the Claims Tribunal. Pending applications also stand disposed of.

10. The Appeal is allowed in above terms. No costs.

