(2012) 10 DEL CK 0280

In the Delhi High Court

Case No : MAC. App. 797 of 2012

ICICI Lombard General Ins. Co. Ltd. — APPELLANT

Vs

Archana Sethi and Others — RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0280

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

Bench : Single Bench

Advocate : Rajat Brar, for the Appellant; Kundan Kumar, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These two Appeals (MAC APP. 797/2012 and MAC APP. 848/2012) arise out of two separate judgments dated 04.02.2012 passed in Suit No. 232/2011 and Suit No. 202/2011 whereby a compensation of Rs. 26,32,000/- (in Suit No. 232/2011) and a compensation of Rs. 28,31,000/- (in Suit No. 202/2011) was awarded in favour of Respondents No. 1 and 2 who are the parents of the deceased Shaurya Sethi and Kislay Kinshuk respectively. Both the deceased were first year Engineering students in a prestigious Institution, that is, Delhi College of Engineering (which later on became Delhi Technological University). Both of them suffered fatal injuries in a motor vehicle accident which occurred on 29.03.2011.

2. The finding on negligence is not challenged by the Appellant Insurance Company. I am, therefore, not required to go into the same.

3. The Claims Tribunal while assessing the deceased''s income referred to the testimony of PW-2 Neeraj Nimwal, Training and Placement Officer, Delhi Technological University who deposed that for the last two years there were 100% placements given to the students. Some of the students got multiple offers. He deposed that last year the maximum offer for a student of 7th

Semester was Rs. 40 lacs per annum and the minimum was Rs. 3.5 lacs per annum. He deposed that all the big companies like Microsoft, IOCL, Morgan Stanley, GAIL, Maruti etc. and various overseas companies come to their campus for campus placement. The Claims Tribunal referred to the judgment of Andhra Pradesh High Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, where it was held that the parents of the children pursuing professional course, i.e. B. Tech. or M. Tech. were spending a sum of Rs. 70,000/- to Rs. 1 lacs per annum towards payment of fee and hostel charges etc. Andhra Pradesh High Court held that it would be reasonable to accept the salary of an Engineering Graduate in the Govt. to award compensation. The Andhra Pradesh High Court further held that there could be deduction of 10% per year in respect of the students studying in second or third year as the case may be. The Claims Tribunal, therefore, took the potential salary of an Engineer to be Rs. 50,000/- per month, deducted 30%, i.e. 10% each per year on the basis of the judgment in B. Ramulamma, deducted 50% towards personal and living expenses, further deducted Rs. 22,000/- towards income tax (as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,), applied the multiplier as per the age of the deceased''s mother to compute the loss of dependency. The Claims Tribunal further awarded notional sum of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards loss to estate and funeral expenses.

4. It is urged by the learned counsel for the Appellant that the compensation awarded is excessive and exorbitant as the deceased Shaurya Sethi and Kislay Kinshuk were students of B.Tech. first year. The award of compensation on assuming an income of Rs. 35,000/- was very excessive as this was only the potential income of the deceased. It is stated that even potential income taken was on the higher side.

5. It is no longer res integra that the potential income of a student pursuing professional course can be taken into account for awarding loss of dependency.

6. In Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of Rs. 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of Rs. 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between Rs. 16,000/- per month to Rs. 25,000/- per month. Thus, the average monthly income of the deceased was taken as Rs. 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to Rs. 21,36,000/-

7. In Ramesh Chand Joshi v. New India Assurance Company MAC APP. 212-213/2006 decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) Rs. 38,333/- per month.

8. I have before me the scale of pay of Group A employee in the Central Govt. which is applicable in the case of Engineers. The gross salary on such scale w.e.f. January, 2011 was Rs. 42,842/-. Moreover, the testimony of PW-2 Neeraj Nimwal that various packages ranging between 3.5 lacs to Rs. 40 lacs were offered to the various students of the 7th Semester was not challenged in cross-examination. Thus, the assumed income of Rs. 50,000/- per month and then the deduction of Rs. 5,000/- per year, i.e. Rs. 15,000/- as the deceased were only in the first year was in consonance with the judgment of the Andhra Pradesh High Court in B. Ramulamma. It has to be borne in mind that Delhi College of Engineering which later on became Delhi Technological University is one of the most prestigious Engineering Colleges in the country. The award of compensation on assumed income of Rs. 35,000/- per month of an Engineering student of such an institution cannot be said to be exorbitant or excessive.

9. The Appeals are devoid of any merit; the same are accordingly dismissed.

10. The amount of compensation deposited shall be released/held in fixed deposit in terms of the order passed by the Claims Tribunal.

11. Deficiency, if any, in the Court fees shall be made up within four weeks.

12. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.