(2010) 12 DEL CK 0005

In the Delhi High Court

Case No : MAC. APP. No. 305 of 2009

ICICI Lombard General Insurance Co. Ltd — APPELLANT

Vs

Birbati and Others — RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166, 170
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2010) 12 DEL CK 0005

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Kundan Kumar Lal, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J. 1. By way of this appeal the Appellant seeks to assail the judgment and award dated 8th April, 2009 passed by the learned Motor Accident Claims Tribunal on a petition filed u/s 166 and 140 of the Motor Vehicles Act, 1988 for grant of compensation by the Respondents No. 1 and 2 herein, who lost their son Pankaj Yadav in a road accident, for which FIR No. 504/2006 under Sections 279/304A IPC was registered at Police Station Najafgarh.

2. The relevant facts are that on 29th May, 2006 the deceased was going from Tura Mandi to Metro Station Najafgarh as pillion rider on the scooter bearing No. HR 26 K 9556, which was being driven by his brother. When they reached Najafgarh-Tilak Nagar Main Road, near Metro Station Opposite Sai Baba Mandir, Najafgarh, their scooter met with an accident with one Maruti Wagon R Car bearing registration No. HR 51 S 1562 which was driven by the Respondent No. 3. As a result of the accident the deceased Sh. Pankaj Yadav fell down on the road and received fatal injuries, resulting in the filing of the claim petition by the Respondents No. 1 and 2 against the driver (Respondent No. 3 herein), the owner (Respondent No. 4 herein) and the insurer of the offending car. The

Respondents No. 3 and 4 having failed to contest the case on merits, the Appellant was granted the requisite permission to do so u/s 170 of the Motor Vehicles Act by order of the Tribunal dated 10th April, 2008.

3. The learned Tribunal by its judgment dated 8th April, 2009, which is impugned in the present appeal, passed an award in the sum of ` 8,17,000/- along with interest @ 7.5% p.a. from the date of the institution of the petition till its realization, in favour of the Respondents No. 1 and 2, herein and directed the Appellant as the insurer of the Maruti Wagon-R car to pay the entire amount of compensation. Aggrieved therefrom, the Appellant has filed the present appeal praying for modification of the award dated 8th April, 2009.

4. At the time of hearing, Ms. Suman Bagga, the learned Counsel for the Appellant challenged the award principally on two grounds. The learned Counsel contended that the learned Claims Tribunal had grossly erred in accepting the salary of the deceased @ ` 8000/- per month on the basis of the salary slip of the deceased, which was produced by the father of the deceased in his evidence. The said document, not having been proved in accordance with law, there is no sufficient proof on the record that the deceased was working with M/s. A.S. Electric Works as Supervisor or was drawing a monthly salary of ` 8000/- per month from the said firm. No witness had been summoned from the said firm, alleged to be the employer of the deceased, to prove that the deceased was working with them and was drawing a salary of ` 8000/- per month.

5. The learned Counsel for the Appellant further contended that in the absence of authentic proof of the salary of the deceased, the Tribunal ought to have considered the income of the deceased on the basis of the minimum wages for the purpose of computing the compensation payable to the Respondents No. 1 and 2. The second contention of Ms. Bagga was that the learned Claims Tribunal had failed to appreciate that the judgment of the Hon''ble Supreme Court rendered in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, was not applicable to the facts of the present case, as no evidence was led to prove the future prospects of the deceased, and even the salary certificate of the deceased had not been proved in accordance with law. As such, the addition of future prospects to the income of the deceased was not sustainable.

6. Mr. Kundan Kumar Lal, the learned Counsel for the Respondents No. 1 and 2, on the other hand, sought to support the award of the Tribunal by contending that the salary certificate Ex.PW1/1 had been proved by the father of the deceased in the course of his evidence and no cogent evidence was adduced to disprove the same. As regards the future prospects of the deceased, the learned Counsel contended that the deceased was 20 years of age at the time of the accident and was earning a sum of ` 8000/- per month. Had he not met with the accident, the deceased would certainly have made progress and risen in life.

7. After hearing the parties and scrutinizing the documents on record, this Court is of the view that the salary certificate, Ex.PW1/1 does not inspire confidence.

The executant of the salary certificate was not called into the witness box to prove the same and it is unlikely to say the least that the deceased, who was aged 20 years and was only a matriculate could have drawn a sum of ` 8000/- as ''Supervisor'' in a firm dealing with electricity jobs, when admittedly he had no formal education in the subject, nor was he technically qualified in any manner. The whole tenor of the document Ex.PW1/1 suggests that it was issued for sympathetic considerations, the contents whereof for the sake of ready reference are reproduced hereunder:

01-07-06

To Whom It May Concern

This is to certify that Late Sh. Pankaj Yadav s/o Shri Chiranji Lal Yadav who was employed as supervisor in the company from last five months and was drawing total monthly salary of Rs. 8000/-.

During his service tenure he was very hard working, dedicated toward work and honest. Due to his death in road accident the company has suffered great loss. My sympathy is with his family members.

Sd/-

8. Further, the salary certificate of the deceased, itself shows that the deceased had been working with M/s. A.S. Electric Works for a period of five months only. There is no evidence on record to suggest that he had worked elsewhere before working with M/s. A.S. Electric Works. It is, therefore, hard to believe that he was drawing a salary of ` 8000/- per month and working on the post of ''Supervisor'' within five months of his joining the firm.

9. Accordingly, this Court is of the view that as the deceased was a Matriculate the learned trial court ought to have taken the minimum wages on the date of the accident as applicable to a Matriculate for the purpose of assessing the income of the deceased. As per the Schedule of the Minimum Wage Rate, on the date of the accident the minimum wage applicable to a matriculate was ` 3760/- per month. As regards future prospects, the deceased was in the age group of 20-30 years. This Court has, in a number of cases, taken judicial notice of the fact that the minimum wages are doubled in the course of 10 years and if adjudged on this basis, the deceased would have drawn double of ` 3760/- at the age of 30 years, which again would have doubled after every ten years. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ,however, the Hon''ble Supreme Court has laid down certain guidelines to enable the Courts to assess the future prospects of the deceased on a uniform basis, and applying the yardstick laid down in the said case, an addition of 50% of the actual salary to the actual salary income of the deceased towards the future prospects of the deceased must be made where the deceased is below 40 years of age. Thus calculated, the income of the deceased works out to ` 3760/- + ` 1880/- = ` 5640/- per month, and the annual income of the deceased thus

comes to ` 67,680/- per annum. Deducting one-half (1/2) therefrom towards the personal expenses of the deceased, keeping in view the fact that the deceased was a bachelor, the annual loss of dependency of the Respondents No. 1 and 2 works out to ` 33,840/-.

10. As regards the multiplier to be adopted, it is well settled that where the deceased is a bachelor, the multiplier is to be determined on the basis of the age of the claimants and not on the basis of the age of the deceased. Ordinarily, the choice of multiplier is determined taking into consideration the age of the mother of the deceased. However, keeping in view the fact that the age of the mother of the deceased was not available on record, the Tribunal in the instant case took into consideration the age of the father of the deceased. For the aforesaid purpose, the Tribunal noted that the affidavit sworn by the father of the deceased had been proved on record as Ex.PW1/A, wherein his age was given as 56 years on 10th April, 2008. The Tribunal, therefore, rightly concluded that on the date of the accident his age was about 54 years and accordingly applied the multiplier of 11 to the annual loss of dependency. I see no cogent reason to disagree with the Tribunal in this regard. Accordingly, applying the multiplier of 11 to the multiplicand of ` 33,840/-, the total loss of dependency of the Respondents No. 1 and 2 is worked out at ` 3,72,240/-.

11. The Tribunal has awarded non-pecuniary damages in the sum of ` 25,000/- on account of loss of love and affection, funeral expenses and loss of estate of the deceased. Adding the aforesaid amount to the pecuniary damages, the Respondents No. 1 and 2 will be entitled for a total compensation of ` 3,72,240/- + ` 25,000/- = ` 3,97,240/-, which may be rounded off to ` 4,00,000/-. Out of awarded amount, the interim award, if any, shall be deducted. Interest @ 7.5% p.a. from the date of the filing of the petition till the date of realization is also held to be payable.

12. The award is accordingly modified to the above extent. Since the award amount is stated to be lying deposited with UCO Bank, Delhi High Court Branch, New Delhi, a direction shall issue to the UCO Bank to release the same in favour of the Respondents No. 1 and 2 to the above extent. The balance shall be refunded to the Appellant.

13. The award amount shall be shared equally by both the Respondents and 50% of the amount awarded to both the Respondents shall be kept in a Fixed Deposit for a period of five years in a nationalized bank with the provision that they may withdraw the periodical interest thereon as ordered by the Tribunal. No loan or advance shall, however, be granted against the said Fixed Deposit Receipts.

14. The appeal stands disposed of accordingly.

15. The trial court records be sent back to the concerned Tribunal.