(2011) 01 DEL CK 0075

In the Delhi High Court

Case No : Mac. App. 303 of 2010 and Cm No. 8505 of 2010

ICICI Lombard General Insurance Co. Ltd. APPELLANT

Vs

Nagendra Roy and Others RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Citation : (2011) 3 TAC 594

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Seema Kumari, for the Respondent

Judgement

Reva Khetrapal, J.—Admit.

2. With the consent of the parties, the matter is taken up for final hearing.

3. The Appellant has filed the present appeal u/s 173 of the Motor Vehicles Act, 1988 against the award dated 08.02.2010 passed by the Motor Accident Claims Tribunal, Dwarka Courts, New Delhi in titled as Shri Nagendra Roy and Ors. v. Shri Darshan Lal and Ors. Claim Petition No. 924/2008.

4. The brief facts leading to the filing of the claim petition are that one Smt. Shanti Devi died in a motor accident on 04.08.2004 while crossing the road. She was survived by the Respondents No. 1, 2 and 3, being her husband and two children, who filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation for her untimely demise. The Petitioners (the Respondents No. 1 to 3 herein) have claimed in the claim petition that the deceased Smt. Shanti Devi was doing the job of a helper in a private company wherefrom she was getting a salary of Rs. 4,500/- per month and as such have prayed for an award in the sum of Rs. 22 lakhs.

5. The learned Claims Tribunal after accepting the allegation of the Respondents No. 1 to 3 that the deceased died on account of injuries sustained by her as a result of the rash and negligent driving of the Respondent No. 4 - the driver of

the car owned by the Respondent No. 5, held the Insurance Company (the Appellant herein) liable to pay a sum of Rs. 6,27,000/- to the Respondents No. 1 to 3 along with interest at the rate of 9% per annum from the date of the filing of the petition till the realisation of the said amount.

6. I find from the record that it is not in dispute that the deceased Shanti Devi @ Sunita was working as a helper in a private company. As there was no documentary evidence with respect to the income of the deceased on record, for the purpose of calculation of loss of dependency, the learned Tribunal took into account the minimum wages prevailing on the date of the accident for an unskilled person, which were in the sum of Rs. 2894.90 per month, which it rounded off to Rs. 2,900/- per month. The learned Tribunal thereafter proceeded to add 50% to the minimum wages of the deceased and thus arrived at the figure of Rs. 4,350/-. Deducting 1/3rd therefrom, the yearly loss of dependency of the claimants was assessed by the Tribunal to be in the sum of Rs. 34,800/-. To augment this multiplicand, the multiplier of 15 was applied in view of the fact that the deceased was 35 years of age at the time of her death. The total loss of dependency was thus computed to be in the sum of Rs. 5,22,000/-, to which a sum of Rs. 75,000/- was added for loss of love and affection and Rs. 10,000/- each towards loss of consortium, funeral expenses and loss to the estate of the deceased.

7. Aggrieved by the aforesaid award, the Appellant has preferred the present appeal in which the award has been sought to be assailed on three grounds:

(i) The learned Claims Tribunal while taking the income of the deceased on the basis of the minimum wages applicable on the date of the accident to an unskilled workman ought not to have assessed the gross monthly income of the deceased to be in the sum of Rs. 4,350/-.

(ii) The learned Claims Tribunal erred in granting Rs. 75,000/- (Rs. 25,000/- per Petitioner) towards love and affection, which is on the higher side.

(iii) The learned Claims Tribunal ought not to have awarded interest at the rate of 9% per annum on the award amount, and instead should have awarded interest at the rate of 6% or at the most at the rate of 7.5% per annum.

8. To counter the aforesaid grounds urged by Ms. Suman Bagga, the learned Counsel for the Appellant, Ms. Seema Kumari, the learned Counsel for the Respondents No. 1 to 3 sought to support the award by relying upon the reasoning given in the award and the judicial precedents cited therein.

9. There is no manner of doubt that it has been settled by a long line of decisions rendered by different Benches of this Court that the Court should take judicial notice of the increase in minimum wages to meet the increase in the price index and inflation rate. This Court has consistently taken the view that minimum wages get doubled over a period of 10 years and this is not a fact which can be brushed aside while computing the loss of dependency of the legal

representatives of the deceased in a motor vehicular accident. It has also been highlighted in a number of decisions of this Court that the Court''s taking into account the increase in minimum wages is not akin to taking into account the future prospects of the deceased in his chosen job or vocation. The following, amongst others, are the decisions of this Court taking the aforesaid view:

(i) Kanwar Devi and Others Vs. Bansal Roadways and Others, ,

(ii) National Insurance Company Limited v. Renu Devi, III (2008) ACC 134,

(iii) UPSRTC v. Munni Devi, MAC. APP. No. 310/2007 decided on 28/07/2008, IV (2009) ACC 879,

(iv) Shanti Devi and Others Vs. Ghasia Kachhap and Others, ,

(v) New India Assurance Co. Ltd. v. Sujata and Ors., MAC. APP. No. 19/2011 decided on January 21, 2011

(vi) Jitender Kumar v. Virender Singh, II (2010) ACC 322 and

(vii) National Insurance Co. Ltd. v. Kailash Devi, II (2008) ACC 770.

10. When confronted with the aforesaid judicial pronouncements, no judgment to the contrary could be cited by the learned Counsel for the Appellant nor any cogent reason given as to why this Bench should differ with the consistent view taken by different Benches of this Court that judicial notice of increase in the minimum wages to meet the increase in price index and inflation rates should be taken note of when the compensation payable to the victim or his legal representatives is being computed on the basis of minimum wages.

11. In the instant case, the deceased was 35 years of age when she met with the unfortunate accident on 4th August, 2004 and thus by 4th August, 2014, i.e., within the span of 10 years, the minimum wages of the deceased would have doubled. The learned Tribunal has applied the multiplier of 15, in consonance with the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and the choice of this multiplier has not been faulted by the Appellant. Thus, taking judicial notice of the fact that in 15 years the income of the deceased would be two and a half times of the minimum wage rate in the year 2004 it can safely be presumed that the income of the deceased would have risen to Rs. 8,700/- p.m.. In the instant case, however, the average annual income of the deceased has been assessed to be in the sum of Rs. 4,350/- per month by taking only a 50% increase to beat the inflation rate and the rise in the price index. I, therefore, see no cogent reason to disagree with the findings of the learned Tribunal in this regard.

12. Adverting to the second ground urged by the Appellant, I am inclined to agree with the Appellant that the sum of Rs. 75,000/- awarded towards loss of love and affection is on the higher side and accordingly, relying upon the decision rendered in Baby Radhika Gupta and Ors. v. Oriental Insurance Co. Ltd. and Ors. 2010 ACJ 758, wherein the Supreme Court upheld awarding of Rs. 25,000/-

towards loss of love and affection, this figure is scaled down to Rs. 25,000/-. After adding the non-pecuniary damages awarded by the Tribunal towards loss of consortium, loss of estate and funeral expenses, the Respondents No. 1 to 3 are accordingly held entitled to receive a total compensation of Rs. 5,77,000/-.

13. As regards the third contention of the Appellant that the interest awarded is on the higher side, being at the rate of 9% per annum from the date of the institution of the petition till the date of realization, I find substance in this contention as well. Accordingly, the rate of interest is reduced to 7.5% per annum from the date of the institution of the petition till the date of realization.

14. With the aforesaid modifications in the award dated 08.02.2010, the appeal stands disposed of. CM No. 8505/2010 also stands disposed of.

