(2012) 03 DEL CK 0682

In the Delhi High Court

Case No : MAC. App. No. 12 of 2012

ICICI Lombard General Insurance Co. Ltd. — APPELLANT

Vs

Poonam Sharma and Others — RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0682

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Navneet Goyal, Advocate for the Respondents No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 14,52,000/- awarded for the death of Neeraj Sharma who died in an accident which occurred on 18.10.2008.

2. There is twin challenge to the impugned award. The learned counsel for the Appellant submits that as per the Voter Identity Card, the deceased was aged 31 years. The Claims Tribunal erred in adopting the multiplier of 17. Secondly, it is stated that there was no evidence with regard to the deceased''s future prospects, yet the Claims Tribunal allowed addition of 50% of the income towards future prospects.

3. On the other hand, it is urged by the learned counsel for the Respondents No. 1 to 4 that the First Respondent filed her affidavit stating that the deceased''s income was steadily increasing which was not challenged in the cross-examination and, therefore, the Claims Tribunal rightly granted the future prospects.

4. I have perused the record.

5. The deceased''s age on the date of the accident as per the Voter Identity Card

Ex.P-25 issued by the Election Commission of India was 31 years, whereas the date of birth of the deceased mentioned on the Marksheet Ex.P-23 issued by the Uttar Pradesh Secondary Education Board is 18.09.1979. Thus, on the date of the accident, the deceased age has to be accepted as 29 years and 01 month. The age contained in a certificate issued by the U.P. Education Board is more authentic being exact. Thus, there is no error in the application of the multiplier by the Claims Tribunal.

6. As far as future prospects are concerned, although the First Respondent deposed that the deceased''s income was steadily increasing, but I would not rely on the same in view of the examination of the employer as PW3. He deposed that the deceased was working as a Salesman and getting a salary of Rs. 6,000/-. There is no evidence of bright future prospects or even of stable employment. The deceased was in employment just for the last six months. The Claims Tribunal erred in granting future prospects to the Claimants. Thus, the loss of dependency comes to Rs. 9,18,000/- (Rs. 6,000 X 12 X 3/4 X17).

7. It is urged by the learned counsel for the Appellant that the compensation of Rs. 40,000/- awarded towards the loss of love and affection is on the higher side. The loss of love and affection cannot be measured in terms of money. 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. I would follow the same. The compensation under the head of loss of love and affection is reduced from Rs. 40,000/- to Rs. 25,000/-.

8. The compensation is re-computed as under:

S.No.

Head of Compensation

Granted by the Claims Tribunal

Granted by this Court

1.

Loss of Dependency

Rs. 13,77,000/-

Rs. 9,18,000/-

2.

Loss of Love and Affection

Rs. 40,000/-

Rs. 25,000/-

3.

Funeral Expenses

Rs. 15,000/-

Rs. 15,000/-

4.

Loss to Estate

Rs. 10,000/-

Rs. 10,000/-

5.

Loss of Consortium

Rs. 10,000/-

Rs. 10,000/-

Total

Rs. 14,52,000/-

Rs. 9,78,000/

9. The overall compensation is thus reduced from Rs. 14,52,000/- to Rs. 9,78,000/-.

10. The excess sum of Rs. 4,74,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal will be refunded to the Appellant ICICI Lombard General Insurance Co. Ltd.

11. The amount of compensation along with interest shall be paid to the Respondents No. 1 to 4/held in Fixed Deposit in the proportion as directed by the Claims Tribunal in UCO Bank, Delhi High Court Branch.

12. The statutory amount of Rs. 25,000/- shall also be refunded to the Appellant Insurance Company.

13. The Appeal is allowed in above terms.