(2012) 02 DEL CK 0527

In the Delhi High Court

Case No : MAC. App. 830 of 2011

ICICI Lombard General Insurance Co. Ltd. APPELLANT

Vs

Ram Swaroop and Others RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) 02 DEL CK 0527

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Anshuman Bal, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant ICICI Lombard General Insurance Co. Ltd. seeks reduction of the compensation of Rs. 5,07,500/- awarded for the death of Jagdish Prasad who died in an accident on 20.02.2009. In the Claim Petition u/s 163-A of the Motor Vehicles Act filed before the Tribunal, the deceased''s salary was claimed to be Rs. 39,000/- per annum.

2. The Tribunal, however, took the deceased''s income to be Rs. 3934/- per month which was the wages of unskilled worker under the Minimum Wages Act and added 50% towards inflation; deducted 50% towards personal living expenses and applied the multiplier of ''17'' to compute the loss of dependency as Rs. 3,40,000/- , after adding a sum of Rs. 7,500/- towards Funeral Expenses, Rs. 10,000/- towards Loss of Estate and Rs. 1,50,000/- towards Loss of Consortium and Loss of the Love and Affection. Overall compensation of Rs. 5,07,500/- was awarded.

3. The learned counsel for the Appellant submits that the multiplier has to be adopted as per the age of the Claimant or the deceased whichever is higher. It is urged that a sum of Rs. 1,50,000/- which was awarded towards loss of love and affection and loss of consortium was not permissible in a petition u/s 163-A of the Act as Claimants are not required to prove negligence on the part of the

driver.

4. The deceased''s income was claimed to be Rs. 39,000/- per annum which is almost equal to the minimum wages of an unskilled worker as on the date of the accident.

5. In a petition u/s 163-A of the Act, compensation has to be awarded as per the structured formula Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, ; The Oriental Insurance Company Limited Vs. Meena Variyal and Others, and The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., .

6. As per the note appended to the Second Schedule 1/3rd of the deceased''s income was required to be deducted towards the personal and living expenses. The appropriate multiplier when a petition u/s 163-A of the Act is filed has to as per Second Schedule which in the instant case would be ''18'' as the deceased was less than 30 years. The compensation is to be re-computed as under:-

Loss of Dependency :

Rs. 4,68,000/- (Rs. 39,000/- x 2/3 x18).

Funeral Expenses :

Rs. 2,000/-

Loss to Estate :

Rs. 2,500/-

TOTAL :

Rs. 4,72,500/-

7. The overall compensation is reduced from Rs. 5,07,500/- to Rs. 4,72,500.

8. The excess amount along with interest earned, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

9. Statutory deposit of Rs. .25,000/- shall also be refunded.

10. The Appeal is allowed in above terms.

11. No costs. Pending applications also stand disposed of.

