(2012) 02 DEL CK 0334

In the Delhi High Court

Case No : MAC. App. No. 208 of 2012 and MAC. App. No. 213 of 2012

ICICI Lombard General Insurance Co Ltd. APPELLANT

Vs

Shrikant and Others RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0334

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

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CM APPL. 3549/2012 (exemption) in MAC APPL. 208/2012 CM APPL. 3591/2012 (exemption) in MAC APPL. 213/2012

Exemption allowed subject to all just exceptions. Applications stand disposed of.

MAC APPL Nos. 208/2012 & 213/2012

1. These two appeals arise out of common judgment dated 17.11.2011 passed by Motor Accident Claims Tribunal whereby a compensation of Rs. 1,95,000/- along with interest @ 7.5 % was awarded for the death of Smt. Manbhawti Devi who died in a accident which occurred on 26.12.2008. The Claims Tribunal on the basis of the judgment of the Supreme Court in Lata Wadhwa & Ors. v.State of Bihar & Ors., (2001) 8 SCC 197 took the value of the gratuitous services rendered by the deceased to be Rs. 3000/- per month. The Claims Tribunal applied the multiplier of ''5'' as the deceased''s age i.e. 65 years to compute the loss of dependency as Rs. 1,80,000/-. After adding conventional sum overall compensation of Rs. 1,95,000/- was awarded.

2. This case is covered by the judgment of this Court in Royal Sundaram Alliance

Insurance Co. Ltd. v. Master Manmeet Singh & Ors. MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(ii) National Insurance Company Limited v. Deepika & Ors. 2010 (4) ACJ 2221,

(iii) Amar Singh Thukral v. Sandeed Chhatwal ILR (2004) 2 Del 1,

(iv Lata Wadhwa and Others Vs. State of Bihar and Others,

(v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,

(vi) A. Rajam Vs. M. Manikya Reddy and Another

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband''s re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

3. In the absence of any qualification of deceased the value of the service rendered by her is to be taken as salary of a non matriculate i.e. Rs. 4127/- on the date of accident, which is to be reduced by 50%. On applying a multiplier of 5 the loss of gratuitous service comes to Rs. 1,23,810/- (4127x1/2x12x5). On adding a sum of Rs. 25,000/- towards Loss of Love and Affection, Rs. 10,000/- towards Funeral Expenses and Rs. 10,000/- towards Loss of Estate, the overall compensation comes to Rs. 1,68,810/-.

4. Although the Claims Tribunal awarded a compensation of Rs. 1,95,000/- on the basis of judgment in Lata Wadhwa (supra). Since there is not much difference in the computation it cannot said that the compensation awarded was exorbitant or excessive.

5. In the circumstances, I would not like to interfere with the impugned award.

6. The Appeals are accordingly dismissed.

7. Pending applications also stand disposed of accordingly. Statutory amount deposited in both the Appeals shall also be refunded to the Appellant/Insurance Company through the counsel.