(2018) 08 DEL CK 0253

In the Delhi High Court

Case No : MAC.APP. 330 OF 2017 & CM APPLs. 12622, 12624 OF 2017

Iffco Tokio General Insurance Co Ltd APPELLANT

Vs

Rekha & Ors RESPONDENT

Date of Decision : 03-08-2018

Acts Referred:

Income Tax Act, 1961 — Section 203

Citation : (2018) 08 DEL CK 0253

Hon'ble Judges : J.R. MIDHA, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.R. MIDHA, J

1. The appellant has challenged the award of Claims Tribunal whereby compensation of Rs.61,14,000/- has been awarded to respondent No.1 to 5.

The appellant is seeking reduction of the award amount.

2. The accident dated 16th February, 2016 resulted in the death of Shish Pal Singh. The deceased was working as Constable with Delhi Police earning

Rs.35,890/- per month at the time of the accident. The deceased was aged 44 years at the time of accident and was survived by his widow, two sons

and two daughters out of which one son and one daughter were married.

3. The Claims Tribunal took the income of the deceased as Rs.35,890/-per month, added 30% towards future prospects, deducted 1/4th towards

personal expenses and applied the multiplier of 14 to compute the loss of dependencyÂ asÂ Rs.58,78,782/-.TheÂ ClaimsÂ TribunalÂ hasÂ

awarded Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and

Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.61,14,000/-.

4. Learned counsel for the appellant urged following submission at the time of hearing:

i. The claimants received ex-gratia amount of Rs.5,00,000/- from Delhi Police Welfare Society which should be deducted from the compensation

amount.

ii. Income tax should be deducted from the income of the deceased.

iii. The personal expenses of the deceased be increased from 1/4th to 1/3rd as the deceased left behind three dependents.

iv. The non-pecuniary compensation be reduced to Rs.70,000/- in terms of principles laid down in National Insurance Co. Limited vs. Pranay

5. Learned counsel for the claimants urged following submissions at the time of the hearing:

i. The ex-gratia amount of Rs.5,00,000/- was paid by Delhi Police Welfare Society and was not linked to the accidental death and therefore, not

deductable.

ii. The personal expenses of the deceased have been rightly taken as 1/4th considering that one daughter of the deceased is handicapped.

iii. Learned counsel has no objection to deduction of Income Tax from the income of the deceased and the reduction of the non-pecuniary

compensation amount in terms of Pranay Sethi (supra).

6. Vide order dated 31st January, 2018, Delhi Police was directed to produce the service record of the deceased and confirm the Income Tax

deducted from his salary as well as the record related to the ex-gratia amount paid to the family of the deceased.

7. On 25th April, 2018, the officer from Delhi Police produced the Certificate under Section 203 of the Income Tax Act, according to which the

annual income of the deceased at the time of the accident was Rs.3,50,410/-out of which Rs.8,282/- was deducted towards Income Tax for the

assessment year 2016-17. Income Tax of the deceased for computation of the income is taken as Rs.3,50,410/- and Rs.8,282/- has to be deducted as

Income Tax. The net income of the deceased, after deducting Income Tax, is computed as Rs.3,42,128/- (Rs.3,50,410/- minus Rs.8,282/-).

8. The ex-gratia amount of Rs.5,00,000/- received by the claimants from Delhi

Police Welfare Society is not linked to the accidental death as the Delhi

Police Welfare Society is a Society based on contribution by the employees for the welfare of the family of the deceased employees who die on duty

and is, therefore, not deductable from the compensation amount. Reference be made to the judgment of the Supreme Court in Reliance General

Insurance Co. Ltd. V. Shashi Sharma and ors., (2016) 9 SCC 627 in which the Supreme Court held that only pecuniary advantage received on

account of the death or injury in a motor accident, is deductible from the compensation amount. However, if the amount would be due to the

dependents of the deceased even otherwise, the same shall not be deductible from the compensation amount. The Supreme Court further held that the

benefits extended to the dependants of the deceased government employee including family pension, Life Insurance, Provident Fund etc., cannot be

allowed to be deducted. The relevant portion of Reliance General Insurance Co. Ltd. V. Shashi Sharma and ors (Supra) is reproduced hereunder:

â??12. â?¦â?¦..the â??pecuniary advantageâ? from whatever source must correlateÂ toÂ theÂ injuryÂ orÂ death causedÂ onÂ accountÂ of

motor accidentâ?¦..

xxx xxx xxx

16. TheÂ principleÂ discernableÂ fromÂ theÂ expositionÂ inÂ Helen C.Rebelloâ??s case (supra) is that if the amount â??would be due to the

dependants of the deceased even otherwiseâ?, the same shall not be deductible from the compensation amount payable under the Act of 1988. At the

same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the Act of

1988â?¦â?¦â?¦...

xxx xxx xxx

22. â?¦..other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including

family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid

to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and Patricia Jean Mahajanâ??s cases

(supra).â??

Â (Emphasis Supplied)

9. With respect to the personal expenses of the deceased, the Claims Tribunal held that one son and one daughter of the deceased were married and

not dependent upon the deceased. The Claims Tribunal held that the deceased left behind three dependents namely widow, one son and one daughter.

It is well settled that in the case of three dependants, the personal expenses of the deceased has to be taken as 1/3rd. However, the Claims Tribunal

took the personal expenses as 1/4th considering that one daughter of the deceased was handicapped, which is not an exception to the rule of

deduction. In that view of the matter, the personal expenses of the deceased are increased from 1/4th to 1/3rd.

10. The Claims Tribunal has awarded Rs.1,00,000/- towards the loss of love and affection which is not a permissible head and is therefore, set aside.

The compensation for loss of consortium, loss of estate and funeral expenses is reduced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively.

11. Taking the net income of the deceased as Rs.3,42,128/- per annum (Rs.3,50,410/- - Rs.8,282/-), adding 30% towards future prospects, deducting

1/3rd towards the personal expenses and applying the multiplier of 14, the loss of dependency is computed as Rs.41,51,153.07. Adding Rs.40,000/-

towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, total compensation is computed as

Rs.42,21,153.07, rounded off to Rs.42,21,155/-.

12. The appeal is allowed and the award amount is reduced from Rs.61,14,000/- to Rs.42,21,155/- along with interest at the rate of 9% per annum

from the date of institution i.e. 10th March, 2016.

13. Pending applications are disposed of.

14. The respondent No.1 is present in Court and has produced the pass book of her savings bank account.

15. Both the parties are directed to bring the computation of interest on the next date of hearing.

16. List forÂ disbursement of theÂ computation amountÂ on 24thÂ August, 2018.

17. Copy of this judgment be given dasti to counsel for the parties under the signature of the Court Master.

