
(2012) 04 DEL CK 0290
In the Delhi High Court
Case No : CM (M) 1244 of 2009

Jitender Kumar and Ors

APPELLANT

Vs

Oriental Insurance Co Pvt Ltd and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 04 DEL CK 0290

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

Bench : Single Bench

Advocate : Kusumlata Sharma, for the Appellant; S. Janani, Advocate for the Respondent No.2 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Petitioners impugn an order dated 08.10.2009 whereby the Motor Accident Claims Tribunal (the Claims Tribunal) declined to grant any compensation to the Petitioners out of the compensation awarded to Smt. Sumitra Devi, the Petitioners' mother (since deceased). A Claim Petition being Suit No.379/1997 was filed by Respondents No.2 to 4 and one by Smt. Sumitra Devi for the death of Ashok Kumar. Said Ashok Kumar was the husband of Respondent No.2 and the father of Respondents No.3 and 4. He was the son of Late Sumitra Devi, who was the Petitioner No.4 in the original Claim Petition. By a judgment dated 18.08.2000 a compensation of Rs. 6,44,000/- was awarded in favour of the Claimants. While apportioning the amount of compensation a sum of Rs. 50,000/- was awarded in favour of Smt. Sumitra Devi (now deceased). Respondents No.2 to 4 and said Smt. Sumitra Devi preferred an Appeal being FAO No.465/2000 for enhancement of compensation which came to be decided by this Court by order dated 01.07.2008. The compensation was enhanced from Rs. 6,44,000/- to Rs. 8,02,000/-. Thus, there was enhancement of Rs. 1,58,000/-. The matter was remitted back to the Claims Tribunal for the apportionment of the enhanced compensation in favour of the LRs of deceased

Ashok Kumar. At that time, it transpired that Smt. Sumitra Devi had in fact expired during the pendency of the Appeal in this Court. The said fact was, however, not brought to the notice of the Court. The contention was raised by the Petitioners before the Claims Tribunal for the payment of compensation of Rs. 50,000/- along with proportionate interest and one-fourth share out of the enhanced compensation of Rs. 1,58,000/- to each of the legal heirs. In the impugned order, it was recorded that although the Petitioners (herein) had no objection if the amount of Rs. 50,000/- was received by the deceased's widow (Respondent No.2 herein) yet the Petitioners wanted that the share of the enhanced compensation must come to their hands.

2 In this Petition, the record of the no objection by the Petitioners for payment of the compensation of Rs. 50,000/- is disputed. Otherwise also, it does not stand to reason that the Petitioners would have no objection for payment of Rs. 50,000/- to the widow along with interest from the date of filing of the Petitioner till the date of its deposit with the Claims Tribunal and they would contest for the share in the sum of Rs. 1,58,000/-.

3. Section 166 of the Motor Vehicles Act (the Act) empowers legal representatives of the deceased who dies in a motor accident to file an application for grant of compensation against the tortfeasor. The Claims Tribunal constituted under the Motor Vehicles Act, 1988 and the Courts grant the compensation on account of the death of a person to the legal representatives as per their financial dependency and the compensation under non-pecuniary heads is also awarded.

4. For instance, a person may die leaving behind a widow and three children. One of the children may be self-sufficient having independent income. No compensation would be awarded to the said child towards the loss of dependency, although he would be a legal heir and a legal representative representing the estate of the deceased.

5. The Petitioners being the deceased's brother and who were not a party to the original Claim Petition were not entitled to any compensation, are not claiming any compensation on account of loss of financial dependency. Their contention, however, is that they must get the share in the compensation which was awarded by the Claims Tribunal by the judgment dated 18.08.2000 and the enhanced compensation granted by the High Court by order dated 01.07.2008. As far as the amount awarded to Smt. Sumitra Devi (the deceased) before her death is concerned, the said amount would devolve on her legal heirs (being estate of Sumitra Devi). However, Smt. Sumitra Devi died during the pendency of the Appeal and as her financial dependency came to an end, the Claims Tribunal was competent to apportion the compensation amongst the legal representatives of deceased Ashok Kumar as per their financial dependency. Smt. Sumitra Devi having died before the decision of the Appeal, the Petitioners are not entitled to any compensation out of the enhanced compensation.

6. The deceased Sumitra Devi was survived by two sons, the Petitioners herein, one daughter Smt. Baby @ Amarjeet and the legal heirs of his pre-deceased son Ashok Kumar (Respondents No.2 to 4 herein). Said Baby had filed a no objection in the shape of an Affidavit for the payment of her share on account of being a legal heir of Smt. Sumitra Devi in favour of Smt. Neeru Kumar (Respondent No.2, the deceased Ashok Kumar's widow). Therefore, out of the four shares, the Petitioners are entitled to only two shares. Thus, from the awarded sum of Rs. 50,000/- to Smt. Sumitra Devi (the deceased), the Petitioners would be entitled to a compensation of Rs. 25,000/- only along with proportionate interest.

7. The impugned order is set aside and the Petition is allowed in above terms.

8. The Claims Tribunal is directed to release the amount of Rs. 25,000/- i.e. Rs. 12,500/- each to the two Petitioners along with proportionate interest immediately. Copy of the order be sent to the Claims Tribunal for compliance.