

(2011) 11 DEL CK 0318

In the Delhi High Court

Case No : FAO 87 of 2001

Kavita and Others

APPELLANT

Vs

Raja Ram and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Citation : (2011) 11 DEL CK 0318

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

Bench : Single Bench

Advocate : Aruna Mehta, for the Appellant; Pankaj Seth, Advocate for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.

CM APPL.13267/2010 (Restoration) in FAO 87/2001

Heard. For the reasons stated in the application the same is allowed. Order dated 06.07.2011 is recalled and the Appeal is restored to its original number.

Application stands disposed of.

FAO 87/2001

1. This appeal is for enhancement of amount of compensation in respect of death of Surender Kumar who was aged about 25 years at the time of the accident which took place on 02.12.1988. The Motor Accident Claims Tribunal (the Tribunal) by the impugned award dated 06.4.2000 awarded compensation of Rs. 1,92,000/-.

2. The Appellant's grievance is that though the deceased income was Rs. 2,500/- per month, the Tribunal estimated the same to be only Rs. 1500/- per month.

3. It is submitted that no compensation towards conventional head like loss of love and affection, loss of consortium, loss of estate and funeral expenses was granted.

4. No cross objections / cross Appeal has been filed by the Respondents.

5. It was established on record that the deceased was manufacturing cardboard boxes. Income of the deceased was not taken as Rs. 2,500/- per month. Non taxable income in the Assessment Year 1988-89 was Rs. 18,000/- only. Thus, the Tribunal rightly believed deceased's income to be Rs. 1500/- per month.

6. It was established from the Appellant No.1 and two supporting witnesses' testimony that the deceased was engaged in manufacturing cardboard boxes. This accident took place while the deceased was travelling in a tempo to supply the said boxes.

7. In the circumstances, on the basis of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, future prospects ought to have been considered; deducting one-fourth towards the personal expenses and applying the multiplier of 18, the dependency works out as Rs. 3,64,608/- (1500 + 750 - 562 x 12 x 18).

8. Considering that the accident took place in the year 1988 and the deceased left behind a young widow, two minor sons and old parents, the Appellants were entitled to be awarded a sum of Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of love and affection and Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. The total compensation thus works out to Rs. 3,99,608/- (3,64,608 + 35,000/-).

9. The Appellants shall be entitled to interest on the enhanced amount of Rs. 1,72,608/- @ 9% per annum from the date of filing of the petition till realization of the amount.

10. The deceased's father has since expired and the minor children Appellants No.2 and 3 must have attained the age of majority. Out of the enhanced compensation of Rs. 25,000/- each along with the proportionate interest shall be payable to Appellants No.2 to 4. Rest of the amount along with interest shall be paid to Appellant No.1.

11. 70% of the enhanced amount shall be held in a fixed deposit in the name of the Appellants in UCO Bank, Delhi High Court Branch. Rest of the amount shall be deposited in their saving bank account and they shall be entitled to withdraw the same at their will. The Appellants shall be entitled to monthly payment of interest which shall be credited in their savings account.

12. Respondent No.2 New India Insurance Company Limited took the defence of breach of terms of the policy. The insurance policy, however, was not proved. The Tribunal, therefore, declined to grant recovery rights to the Respondent insurance company. Since the insurance policy was not proved regarding the payment of

the extra premium, the Tribunal rightly declined to grant recovery rights to the Respondent No.2 Insurance company.

13. The impugned award is modified and the appeal stands disposed of in above terms. No costs.

14. All pending applications stands disposed of.

15. Copy of the order be given Dasti to the Appellants and UCO bank, DHC Branch. Copy of the order may be sent to the Trial Court for information.