(2011) 12 DEL CK 0121

In the Delhi High Court

Case No : MAC APP 386-88 of 2005

Krishna Bhagat and Others APPELLANT

Vs

Tejvir Singh and Others RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0121

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

Bench : Single Bench

Advocate : M.L. Mahajan, for the Appellant; Kanwal Chaudhary, Advocate, for the Respondent

Judgement

G.P. Mittal, J.—The Appellants seek enhancement of compensation being legal representatives of the deceased Satya Bhagat who died in an accident which took place on 06.08.1986. The deceased was working as an Assistant Engineer with Indian Airlines and was aged about 55 years on the date of the accident. He was getting a salary of Rs. 7306/- per month. The Tribunal took the deceased''s salary to be Rs. 5300/-, deducted Rs. 1300/- towards income tax and calculated the loss of dependency, on applying the multiplier of 11. The overall compensation of Rs. 5,43,000/-was awarded.

2. It is urged by the learned counsel for the Appellants that the deceased''s income was proved as Rs. 7306/- by the document Ex. PW-3/2 as also by PW-3''s testimony. It is urged that the income tax should not have been deducted while computing the dependency and interest should have been awarded @ 12% per annum.

3. I have perused the impugned award and the Trial Court Record. It is true that the deceased''s salary was established as Rs. 7306/-per month. It is well settled that for the purpose of calculating the loss of dependency, deceased''s net income i.e. gross income minus income tax has to be considered. (Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,).

4. Damyantiben & Ors. v. Firozkhan Abdul Rasidkhan Pathan & Anr., III (2009) ACC 508 (DB) relied upon by the learned counsel for the Appellants that the income tax should not be deducted is not good law in view of the Sarla Verma (supra). The liability of income tax on the income of Rs. 7306/- x 12 = 87672/- was Rs. 24,290/- in the assessment year 1987-88. (Relevant to the date of the accident); deducting one-fourth towards personal expenses and applying the multiplier of 11, the total dependency works out as Rs. 5,22,901.5P (7306 x 12 = 87,672/- - 24,290 (tax)= 63,382/- - 15,845.5P (one-fourth) = 47536.5 x 11 = 522,901.5 rounded to Rs. 5,22,902/-.

5. After adding the notional amount under conventional heads of loss of love and affection, loss of consortium, loss of estate, the total compensation works out as under:-

Head Awarded by the in (Rs.) Awarded by in (Rs.)

Loss of dependency 5,28,000/- 5,22,902/-

Loss of love & affection 25,000/-

Loss of consortium 15,000/- 10,000/-

Loss of estate 10,000/-

Funeral Expenses 5,000/-

TOTAL 5,43,000/- 5,72,902/-

6. The compensation thus stands enhanced by Rs. 29,902/- which shall carry interest @ 7.5% per annum. I am not inclined to grant interest at higher rate as the interest rate have been varying from time to time as this is an old appeal.

7. The award amount along with interest shall be deposited by the Respondent No. 3 New India Assurance Company Limited within six weeks from the date of this order.

8. Appeal is allowed in above terms. No costs.

9. Pending application also stands disposed of.

