(2012) 01 DEL CK 0587

In the Delhi High Court

Case No : MAC. APP. 501 of 2004

Kusum Jugram and Others APPELLANT

Vs

Sanju Boro and Others RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0587

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

Bench : Single Bench

Advocate : Navneet Goyal with Ms. Suman N. Rawat, for the Appellant; Neerja Sachdeva, for R-3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellants who are the legal heirs of the deceased J.P. Jugran impugns the judgment dated 05.07.2004 whereby a compensation of Rs. 12,86,900/- was awarded for the death of the deceased, who died in an accident, which took place on 08.01.2002.

2. The deceased was working as a Deputy Manager (Sports) with M/s. Bongaigaon Refinery and Petro Chemicals Ltd. and was getting a salary of Rs. 30,635/- in the pay scale of Rs. 16,000/- to 20,000/-. The Motor Accident Claims Tribunal, (the Tribunal) took Rs. 20,000/- as the deceased''s income after excluding the tax and allowances, added 50% towards the future prospects, deducted one-third towards the personal expenses and applied the multiplier of ''14'' to compute the loss of dependency as Rs. 33,60,000/-. The overall compensation of Rs. 33,85,000/- was computed.

3. The Tribunal further deducted a sum of Rs. 20,98,100/- on account of the Group Insurance Policy obtained by the deceased employee on the basis of the principles of balancing the loss and gain as laid down in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , an overall compensation of Rs. 12,86,900/- was awarded in favour of the Appellants and Respondents No.4

and 5.

4. The impugned award is challenged on the following grounds:-

(i) All perquisites should have been taken into account as they were part of the salary.

(ii) Since there were five dependents (including the parents Respondents No.4 and 5), one-fourth should have been deducted towards the personal and living expenses.

(iii) The payment of Rs. 20,98,100/- made by another Insurance Company on account of Group Insurance was not liable to be deducted.

5. A perusal of the Pay Certificate Ex.PW-1/22 reveals that various allowances including DA, constituted a component of about Rs. 10,000/-. It is well settled that all perquisites which are part of the salary have to be included for the purpose of computation of loss of dependency.

6. It is well settled that for the purpose of computation of the loss of dependency not only take home salary but also other allowances and perks which would have benefited the entire family and prospective loss of future earning is to be considered (National Insurance Company Ltd. Vs. Smt. Saroj and Others, and National Insurance Company Ltd. Vs. Indira Srivastava and Others,).

7. The Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, laid down the following principles for grant of compensation in death cases:-

I. MULTIPLIER

Age of the deceased (in years)

Multiplier

15-20

18

21-25

18

26-30

17

31-35

16

36-40

15

41-45

14

46-50

13

51-55

11

56-60

09

61-65

07

Above 65

05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased - unmarried

(i)

Deduction towards personal expenses. :

1/2 (50%)

(ii)

Deduction where the family of the bachelor is large and dependent on the income of the deceased. :

1/3rd (33.33%)

Deceased - married

(i)

2 to 3 dependent family members. :

1/3rd

(ii)

4 to 6 dependent family members :

1/4th

(iii)

More than 6 family members :

1/5th

(iv)

Subject to the evidence to the contrary. :

Father, brother and sisters will not be considered as dependents.

III. FUTURE PROSPECTS

(i)

Permanent job :.

Actual salary ? tax + 50%

Below 40 years of age

towards future prospects

(ii)

Permanent job :

Actual salary ? tax + 30%

Between 40-50 years

towards future prospects.

(iii)

More than 50 years with:

Actual salary only.

permanent job.

No addition for future prospects.

(iv)

Deceased employed at a fixed:

Only actual income to be taken. No addition.

Salary (without provision for Annual increments)

8. Thus, even if the deceased''s father is excluded from the dependency, there were four dependents on the deceased and deduction of one-fourth was required to be made towards the personal living expenses as against one-third made by the Tribunal. At the same time, addition of only 30% should have been made in future prospects as against 50% done by the Tribunal. The tax liability on the income of Rs. 4,77,906/- in the assessment year 2002-2003 was Rs. 1,18,544/-. Thus, the revised loss of dependency works out as Rs. 37,73,308/- (30,365/- + 30% x 12 - 1,18,544/- (tax liability) - 1/4 x 14).

9. I would further award a sum of Rs. 25,000/- towards the loss of love and affection, Rs. 10,000/- towards consortium, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. The overall compensation comes to Rs. 38,23,308/-.

10. The moot question, however, is whether the amount of Rs. 20,98,100/- is to be deducted from the amount of compensation payable to the legal representatives of the deceased.

11. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , it was held that the principle of balancing between the loss and gain by reason of death to arrive at the amount of compensation is the general rule. In para 7 of the report, it was held as under:-

...Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.

12. In Helen C. Rebello (Supra), the Supreme Court considered the various English decisions to form an opinion as to what would be the pecuniary advantage liable to be deducted from the compensation payable on account of the death or the injuries suffered in an accident. The Supreme Court referred to the English decision in Bradurn v. Great Western Rail Co., (1874-80) All ER 195, where it was held as under:-

Where a plaintiff suffers personal injuries through the negligence of the defendant, the damages awarded are not to be reduced because the plaintiff has insured himself against accidental injury. In such a case the plaintiff is entitled to receive the amount payable by the insurer in addition to the damages recoverable from the defendant.

13. In a later decision in Dalby v. India and London Life Assurance Co., (1854) 15 CB 365, it was held that the person who suffers injuries ought to have got the amount from his own insurer in addition to the damages from the tortfeasor.

14. The trend changed in Grand Trunk Railway of Canada v. Jennings, (1888) 13 AC 800, where it was held that pecuniary benefits from insurance policies, whatever the source and pension schemes whether contributory or non-contributory, were liable to be deducted.

15. In Helen C. Rebello (supra) it was held that the amount of Provident Fund, sum payable on life insurance policy, etc. were not deductable from the amount of compensation because these sums are payable to the legal representatives of the deceased even when the death is not accidental. The distinction was made on gains on account of natural death and accidental death. It was held that whatever comes to the legal representatives by virtue of the accidental death only would be liable to the deducted. I extract Para 34 and 35 of the report

hereunder,:-

34. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, co-relating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving motor vehicle, would not be covered under the Motor Vehicles Act. Thus, the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, viz., accidental. If the words ''pecuniary advantage'' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the ''pecuniary advantage'' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, form whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The Constitution of the Motor Accidents Claims Tribunal itself u/s 110 is, as the Section states;

...for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,...

35. Thus, it would not include that which claimant receives on account of other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental

death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the ''pecuniary advantage'', liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of Section 95. Under it, the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee.

(Underlines are mine)

16. From Helen C. Rebello (supra) it is evident that the sums which are payable to the legal representatives only on account of the accidental death, are liable to be deducted. Other sums of money i.e. Provident Fund, Family Pension, payment under Life Insurance Policy, cash, Bank balance, shares, fixed deposits, etc. which are otherwise receivable as legal heirs are not liable to be deducted.

17. Thus, the payable compensation comes to Rs. 38,23,308/- - 29,98,100/- = 17,25,208/-. The amount of compensation is enhanced from Rs. 12,86,900/- to Rs. 17,25,208/-.

18. This accident took place in the year 2002. The deceased''s children i.e. Appellants No.2 and 3 must have grown up now. The enhanced compensation shall carry interest @ 7.5 % per annum from the date of filing of the petition till the date of payment.

19. 50% of the awarded amount shall be released to Appellant No.1 forthwith. Rest of the 50% shall be held in fixed deposit for the period of three years. The Appellant No.1 shall be entitled to premature encashment for higher education of Appellants No.2 and 3.

20. The entire amount shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi through the Registrar General of this Court within 30 days.

21. The Appeal is allowed in above terms. No costs.