(2012) 02 DEL CK 0350

In the Delhi High Court

Case No : MAC. App. 564 of 2011

Madhu Arora APPELLANT

Vs

IFFCO Tokio General Insurance Co Ltd and Others RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0350

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

Bench : Single Bench

Advocate : Hameed Sheikh, for the Appellant; Suman Bagga, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant seeks enhancement of compensation of Rs. 4,17,504/- awarded for the death of her son Manoj, who died in a motor accident which occurred on 07.12.2006. In the Claim petition filed by the Appellant, it was claimed that the deceased was working as a Disco Jockey and was earning ` 15,000/- per month. In the absence of any documentary evidence with regard to deceased''s income or his profession, the Tribunal took the minimum wages of an unskilled person, added 50% towards inflation, applied multiplier of 13 to compute the loss of dependency.

2. It was specifically stated in Para 23 of the Claim Petition that the deceased was working as Disco Jockey and was earning ` 15,000/- per month. In the written statement filed by Respondents No.2 and 3 i.e. owner and the driver and the Respondent No.1 i.e. Insurer these facts are not traversed specifically or by implication. These are, therefore, deemed to be admitted.

3. Although the Appellant did not produce any documentary evidence to show that the deceased was working as Disco Jockey, she testified that her son was working as such and was earning ` 15,000/- per month. The testimony of PW-1 and PW-2 show that they were working with deceased Manoj and transporting his goods from time to time.

4. A very important document in the shape of a pass book Ex.PW1/E of Oriental Bank of Commerce in the name of Manoj Kumar Arora is on record wherein the deceased deposited a sum of ` 56,000/- during the period of 9th March to 9th October; a withdrawal of only about ` 11,000/- was made from the same during this time. It is, therefore, evident that the deceased was depositing on a average a sum of ` 8,000/- per month after meeting his expenses. In view of non-denial of the averments made in the petition and the pass book Ex.PW-1/E, I would believe the testimony of deceased''s mother that the deceased was working as Disco Jockey and was earning ` 15,000/- per month. His annual income comes to ` 1,80,000/- on which there would be a liability to pay income tax of ` 4,000/-. On deducting 50% of the deceased''s income towards his personal living expenses and applying multiplier of ''13'' according to the age of the Appellant (46 years), the loss of dependency would arrive at`11,44,000/- (1,76,000/- x13x1/2).

5. On adding a compensation of ` 25,000/- on account of loss of Love and Affection; `10,000/- towards Funeral Expenses and `10,000/- towards Loss to Estate, the compensation is enhanced from Rs. 4,17,504/- to Rs.11,89,000/-. The enhanced compensation shall carry interest @ 7.5 % per annum as awarded by the Claims Tribunal from the date of the filing of the petition till date of the deposit in this Court.

6. The Respondent is directed to deposit the enhanced amount along with interest within 30 days with Registrar General of this Court. The 20% of the enhanced compensation shall be released to the Appellant forthwith. Rest 80% shall be held in Fixed Deposit in equal sum of 20% each for a period of 1 year, 2 years, 3 years and 4 years respectively. The Appeal is allowed in above terms.