(2014) 07 DEL CK 0151

In the Delhi High Court

Case No : Mac. App. Nos. 699, 711, 712 and 728 of 2007

Mona Kumari Dokania APPELLANT

Vs

Surender Kumar Singh RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2014) 3 ACC 784 : (2015) ACJ 1784 : (2015) 2 AnWR 737

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Radhika Chandrashekhar, Advocate for the Appellant; Sameer Nandwani, Advocate for the Respondent

Judgement

Deepa Sharma, J.—The petitioner in this case is a minor and still waiting for just and fair compensation for the loss of her family which included her parents and two minor siblings in an accident. She had filed Suit Nos. 55/2006, 56/2006, 57/2005 and 58/2005 under Sections 166 and 140 of Motor Vehicles Act, 1988 (hereinafter referred to as the Act). All the suits were disposed of by the Tribunal vide its common order dated 3rd November, 2007.

2. Since the appeals are resulted out of a common order of the Tribunal, the same are disposed of vide this common order.

3. The brief facts in all these suits are that on 7.6.2002 at about 2.25 p.m. the family of the appellant, namely Ramesh Dokania (father), Mrs. Sunita Devi Dokania (mother), Master Nikunj Dokania and Master Vivek Dokania (both brothers) were going on a pilgrimage tour ''Badri Ka Dham'' and were travelling along with other passengers in a Tata Sumo bearing No. UA-07C-9648. The driver of the said Tata Sumo was driving the vehicle at a very high speed and in a rash and negligent manner and as a result of which Tata Sumo fell down into the Yamuna river at Saya Chatti, Barkot, Uttaranchal. All the occupants of the Tata Sumo along with its driver died in the said accident either on account of

injuries sustained or due to drowning. The dead bodies of Mrs. Sunita Dokania and Master Vivek Dokania could be recovered, whereas the dead bodies of Mr. Ramesh Dokania and Master Nikunj Dokania could not be recovered. FIR bearing No. 27/02 under Sections 279/ 304A, IPC was registered at Police Station Barkot, Uttaranchal. The respondent No. 1 is the owner of the vehicle and respondent No. 2 is the Insurance Company. These petitions had been filed by the minor Ms. Mona through her maternal uncle Mr. Mukesh Kumar.

4. In the trial, it was deposed that all the occupants of Tata Sumo including driver had died in the said accident. It is admitted fact that the said Sumo was duly insured under a valid policy. The learned Tribunal has reached to the conclusion, on the basis of the evidence on record that accident was the result of the rash and negligent driving of the driver of the Tata Sumo which has resulted into the death of all its occupants including the parents and the brothers of the appellant. The Tribunal has also reached to the conclusion that primarily respondent No. 2 i.e. the Insurance Company is liable to pay the compensation. There is no challenge to these findings of the Tribunal. The findings, therefore, had attained finality.

MAC. APP. 699/2007 in Suit No. 58/2005

5. In this case the compensation of a sum of Rs. 7,09,000 along with interest at the rate of 7 % was awarded on account of death of Sh. Ramesh, the father of the appellant, out of which Rs. 6,89,000 was awarded towards loss of dependency. It is submitted that it is not just and fair compensation. It is submitted that the deceased, Mr. Ramesh Kumar was 32 years of age and that the Tribunal has not applied the correct multiplier. It is argued that as per the findings in the case Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal ought to have used the multiplier of 16. It is argued that proper and just compensation under the head of loss of love, company and affection, etc. has not been awarded just by the Tribunal. It is prayed that award be enhanced along with interest at the rate of 18% per annum.

6. Admittedly, the age of the deceased at the time of accident was 32 years. The multiplier used by the Tribunal was 13. The Tribunal ought to have used multiplier of 16 in this case as per Sarla Verma''s case (supra). There is no challenge to the multiplicand which the Tribunal has used. The Tribunal has arrived at a multiplicand of Rs. 53,000.

The total loss of dependency, therefore, comes to Rs. 53,000 x 16 = 8,48,000.

7. The appellant has also prayed a sum of Rs. 1,00,000 towards loss of love and affection Rs. 10,000, towards loss of estate.

8. In a recent judgment in case Rajesh and Others Vs. Rajbir Singh and Others, , the Hon''ble Supreme Court has dealt with the grant of compensation towards loss love and affection, funeral charges and non-pecuniary damages and has observed as under:

"...17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi.. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2,500 to Rs. 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma''s case, it was held that compensation for loss of consortium should be in the range of Rs. 5,000 to Rs. 10,000. In legal parlance, ''consortium'' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement by loss of consortium, the Courts have made an attempt to compensate the loss of spouse''s affection, comfort, solace, companionship, society, assistance, protection care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least rupees one lakh for loss of consortium."

9. I, thus, award a sum of Rs. 1,00,000 towards loss of love and affection, and Rs. 10,000 towards loss of estate.

10. I award total compensation as under:

11. I also enhance the interest from 7% to 9% per annum.

12. No funeral expenses are granted in this case since the dead body of the deceased could not be recovered and cremated.

13. In view of the above discussion, I award a total compensation of Rs. 9,58,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC APP 712/2007 in Suit No. 55/05

14. In this case the compensation of a sum of Rs. 7,62,000 along with interest at the rate of 7% was awarded out of which Rs. 7,42,000 was awarded towards loss of dependency. It is submitted that it is not just and fair compensation. It is submitted that the deceased, Ms. Sunita Dokania was 28 years of age and that

the Tribunal has not applied the correct multiplier. It is argued as per the findings in Sarla Verma''s case (supra), the Tribunal ought to have used the multiplier of 17. It is argued that proper and just compensation under the head of loss of love, company and affection, etc. has not been awarded just by the Tribunal. It is prayed that award be enhanced along with interest at the rate of 18% per annum.

15. Admittedly, the age of the deceased at the time of accident was 28 years. The multiplier used by the Tribunal was 14. The Tribunal ought to have used multiplier of 17 in this case as per Sarla Verma''s case (supra). There is no challenge to the multiplicand which the Tribunal has used. The Tribunal has arrived at a multiplicand of Rs. 53,000.

The total loss of dependency comes to Rs. 53,000 x 17 = 9,01,000.

16. The appellant has also prayed a sum of Rs. 1,00,000 towards loss of love and affection, Rs. 10,000, towards loss of estate and Rs. 25000 towards funeral expenses.

17. With respect to the issue of funeral expenses the hon''ble Supreme Court has dealt with the grant of compensation towards funeral expenses in Rajesh''s case (supra) and has observed as under:

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head ''Funeral Expenses''. The ''price index'', it is a fact has gone up in that regard also. The head ''funeral expenses'' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of ''Funeral Expenses'', in the absence of evidence to the contrary for higher expenses to award at least an amount of Rs. 25,000."

18. In view of the above Rajesh''s case (supra) judgment of the Apex Court, I award a sum of Rs. 1,00,000 towards loss of love and affection, Rs. 10,000 towards Loss of Estate and Rs. 25,000 towards funeral expenses.

19. I award total compensation as under:

20. I also enhance the interest from 7% to 9% per annum.

21. In view of the above discussion, I award a total compensation of Rs. 10,36,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC APP No. 711/2007 in Suit 56/2005

22. The contention of the appellant in this case is that the compensation of a

sum of Rs. 1,60,000. It is submitted that it is not just and fair compensation. It is submitted that the deceased, Master Nikunj Dokania was 2 1/2 years of age and that the Tribunal has not applied the correct multiplier. It is argued that proper and just compensation under the head of loss of love, company and affection etc. has not been awarded just by the Tribunal. It is prayed that award be enhanced along with interest at the rate of 18% per annum.

23. Admittedly, the age of the deceased at the time of accident was 2 1/2 years. The multiplier used by the Tribunal was 15 as per second schedule provide under Section 163A. There is no challenge to the multiplicand which the Tribunal has used. The Tribunal has arrived at a multiplicand of Rs. 15,000.

24. It is argued on behalf of the appellant that the Apex Court has in a recent judgment in the case R.K. Malik and Another Vs. Kiran Pal and Others, , granted Rs. 75,000 towards non pecuniary damages. It is submitted that in view of the findings of the Apex Court the appellant is entitled to the said sum. It is urged that this Court in the case II (2010) ACC 9 titled as National Insurance Company Ltd. v. Farzana and Others has awarded a sum of Rs. 2,25,000 towards loss of dependency and compensation of Rs. 75,000 for the future prospects. It is now a settled law as laid down in the judgment of R.K. Malik''s case (supra) as well as the case of Farzana''s case (supra) that while calculating the loss of income in case of a person who has no income prior to the accident, notional income provided under Section 163A read with Second Schedule, item No. 6 which is Rs. 15,000 per month has to be reckoned for calculating the loss of dependency.

Therefore, loss of dependency comes to Rs. 15000 x 15 = Rs. 2,25,000.

25. As already discussed above, in Rajesh''s case (supra), the hon''ble Supreme Court has dealt with the grant of compensation towards loss love and affection and in R.K. Malik''s case (supra), with the grant of non-pecuniary damages.

26. Therefore, I also award Rs. 1,00,000 towards love and affection and Rs. 75,000 towards non pecuniary damages.

27. I award total compensation as under:

28. I also enhance the interest from 7% to 9% per annum.

29. No funeral expenses are granted in this case since the dead body of the deceased could not be recovered and cremated.

30. In view of the above discussion, I award a total compensation of Rs. 4,00,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC. APP. 728/2007 in Suit No. 57/2005

31. The contention of the appellant in this case is the compensation of a sum of Rs. 1,90,000. It is submitted that it is not just and fair compensation. It is submitted that the deceased, Master Vivek Dokania was 9 years of age and that

the Tribunal has not applied the correct multiplier. It is argued that proper and just compensation under the head of loss of love, company and affection etc. has not been awarded just by the Tribunal. It is prayed that award be enhanced along with interest at the rate of 18% per annum. Admittedly, the age of the deceased at the time of accident was 9 years. The multiplier used by the Tribunal was 15 as per Second Schedule provide under Section 163A. There is no challenge to the multiplicand which the Tribunal has used.

32. As argued and discussed above, it is now a settled law as laid down in the judgment of R.K. Malik (supra) as well as the case of Farzana (supra) that while calculating the loss of income in case of a person who has no income prior to the accident, notional income provided under Section 163A read with Second Schedule, item No. 6 which is Rs. 15,000 per month has to be reckoned for calculating the loss of dependency.

Therefore, loss of dependency comes to Rs. 15000 x 15 = Rs. 2,25,000.

33. As already discussed above, in Rajesh''s case (supra), the Hon''ble Supreme Court has dealt with the grant of compensation towards loss love and affection, funeral charges and in R.K. Malik''s case (supra), the Hon''ble Supreme Court has dealt with grant of compensation towards non pecuniary damages.

34. Therefore, I also award Rs. 1,00,000 towards love and affection Rs. 25,000 towards funeral expenses and Rs. 75,000 towards non-pecuniary damages.

35. I award total compensation as under:

36. I also enhance the interest from 7% to 9% per annum.

37. In view of the above discussion, I award a total compensation of Rs. 4,25,000 with interest at the rate of 9% per annum from the date of filing the petition till its realization.

Relief

MAC. APP. 699/2007 in Suit No. 58/2005

38. Compensation of Rs. 9,58,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC APP 712/2007 in Suit No. 55/05

39. Compensation of Rs. 10,36,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC APP No. 711/2007 in Suit 56/2005

40. Compensation of Rs. 4,00,000 with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

MAC. APP. 728/2007 in Suit No. 57/2005

41. Compensation of Rs. 4,25,000 with interest at the rate of 9% per annum from the date of filing the petition till its realization.

42. The compensation in the aforesaid four appeals shall be released to the appellant in terms of the directions in award of learned Tribunal dated 3.11.2007 till she attains majority. On her attaining majority 75% of the total amount be kept in fixed deposits. Money can be released out of fixed deposits for higher education of the appellant and for her marriage with prior permission of Court. The interest accrued on these fixed deposits shall, however, be released to the appellant to meet her expenses. In view of the above, the appeals stand disposed of.