(2012) 10 DEL CK 0415

In the Delhi High Court

Case No : MAC. APP. 227 of 2010

M/s. The New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Siraj Begum and Others RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0415

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

Bench : Single Bench

Advocate : D.D. Singh, with Mr. Navdeep Singh, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs.5,91,672/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 7 for the death of Shawaz Khan, a bachelor aged 25 years. The finding on negligence is not challenged by the owner, driver or the Appellant Insurance Company; the same therefore has attained finality.

2. During inquiry before the Claims Tribunal it was claimed that the deceased Shawaz Khan was a self-employed person and was earning Rs.10,000/- to Rs.12,000/- per month. In the absence of any evidence with regard to the deceased'' income, the Claims Tribunal took the minimum wages of an unskilled worker as fixed by the Govt. of NCT of Delhi under the Minimum wages Act; added 50% towards future prospects; deducted one-third towards personal and living expenses (as the deceased had younger siblings); and applied the multiplier of 13 to compute the loss of dependency.

3. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) There should have been deduction of 50% towards personal and living expenses in the case of a bachelor.

(ii) The age of the deceased''s mother was 65 years and, therefore, the appropriate multiplier was 5 instead of 13 as taken by the Claims Tribunal.

(iii) Although there was no evidence with regard to deceased''s future prospects, the Claims Tribunal made an addition of 50% towards future prospects.

(iv) The compensation of Rs.50,000/- awarded towards loss of love and affection is on the higher side.

DEDUCTION AND MULTIPLIER:-

4. In this case the deceased Shawaz Khan left behind seven legal representatives. His father Nazakat Khan died immediately after filing of the Claim Petition. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Supreme Court laid down that where a deceased bachelor had the responsibility of younger siblings, it would be appropriate to make deduction of one-third instead of one-half towards personal and living expenses. Thus, the Claims Tribunal was justified in making deduction of one-third towards personal and living expenses.

5. As far as multiplier is concerned, I have before me a photocopy of the voter Identity Card issued by the Election Commission of India (Ex. PW-1/A) which shows that Smt. Siraj Begum, the deceased''s mother was aged 48 years on 01.01.2008. Thus, on the date of the accident she was only about 47 years. The Claims Tribunal therefore, rightly applied the multiplier of ''13''.

6. No evidence was led by the Claimants to prove as to what was the deceased''s profession and what were his future prospects. Thus, in the absence of any evidence with regard to deceased''s future prospects, an addition of 50% could not have been made. (Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, ; and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,). On the other hand, an addition of 30% should have been made towards inflation on the basis of the judgment of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

7. The loss of dependency thus comes to Rs.4,47,782/- (3312/- + 30% x 2/3 x 12 x 13) as against a sum of Rs.5,16,672/- awarded by the Claims Tribunal.

8. The Claims Tribunal awarded a sum of Rs.50,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs.25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs.25,000/- only.

9. The Claims Tribunal awarded a sum of Rs.25,000/- towards funeral expenses. Funeral expenses are awarded on the basis of actual expenditure. No evidence

was led with regard to the expenditure on last rites. In the absence of any evidence, Courts usually award a sum of Rs.10,000/- towards funeral expenses. The compensation awarded towards funeral expenses is thus reduced from Rs.25,000/- to Rs.10,000/- only. The Claimants are further awarded a sum of Rs.10,000/- towards loss to estate.

10. The overall compensation is thus reduced from Rs.5,91,672/- to Rs.4,92,782/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

11. The excess amount of Rs.98,890/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

12. The compensation awarded shall be released/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.

13. The statutory deposit of Rs.25,000/- be refunded to the Appellant Insurance Company.

14. The Appeal is allowed in above terms. Pending Applications also stand disposed of.

