(2009) 04 DEL CK 0357

In the Delhi High Court

Case No : MAC. APP. 49 of 2008

Mumtaz and Others APPELLANT

Vs

Muzabar Ali and Others RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0357

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Shakeel Ahmed Saifi and Islam Khan, for the Appellant; Sameer Nandwani, for K.L. Nandwani, for R-3, for the Respondent

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby the compensation of Rs. 4,42,076/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 16th September, 2002 resulted in the death of Mr. Abdul Jabbar aged 24 years working as a carpenter earning Rs. 4,500/- per month. The deceased was survived by his widow, one minor son and one minor daughter and parents who have filed the claim petition before the learned Tribunal.

3. The learned Tribunal awarded Rs. 4,42,076/- to the claimants. The learned Tribunal rejected the evidence led by the appellant relating to the occupation and income of the deceased on the ground that there was some contradiction in the statement of the witnesses. The learned Tribunal took the minimum wages of Rs. 3,103/- for a skilled worker to compute the compensation. 1/3rd amount was deducted towards the personal expenses of the deceased and the multiplier of 17 was applied to compute the loss of dependency at Rs. 4,22,076/-. Rs. 5,000/- has been awarded towards funeral expenses, Rs. 5,000/- has been awarded towards loss of estate and Rs. 10,000/- has been awarded towards loss of consortium. No amount has been awarded towards loss of love and affection.

4. The appellants have challenged this award on the following grounds:

(i) The income of the deceased be taken as Rs. 4,500/- per month.

(ii) The future prospects be taken on the aforesaid income of the deceased.

(iii) The deduction towards the personal expenses be reduced from 1/3rd to 1/6th considering that the deceased left behind five dependents.

(iv) Compensation for loss of love and affection be awarded.

(v) Compensation for loss of consortium be enhanced.

5. With respect to the occupation and income of the deceased, the appellant examined the employer of the deceased who appeared as PW ? 3. He is the proprietor of the firm M/s. Mazahir Hussain carrying on the work of interior decorator and civil contractor. PW-3 deposed that that deceased was working with him as a carpenter from 1st October, 2000 to 15th September, 2002 and he was drawing a salary of Rs. 4,500/- per month. He further deposed that the deceased was very hardworking, sincere and was an expert carpenter. The witness also proved the certificate Ex.CW3/A which recorded the occupation and income of the deceased.

6. The occupation and income of the deceased has been clearly proved from the statement of PW- 3. However, the learned Tribunal has rejected the said evidence on the ground that widow of the deceased who appeared as PW-1 stated that the deceased was working as a contractor. The learned Counsel for the appellant submits that the widow of the deceased is an illiterate lady and appears to have misspelt the words contractor instead of carpenter and, therefore, the variation in statement of PW-1 has been sufficiently explained.

7. I agree with the contention of learned Counsel for the appellant. The income of the deceased is taken to be Rs. 4,500/- per month as per the testimony of PW-3 and Ex.CW3/A. PW-3 further deposed that the deceased was very hardworking, sincere and was an expert carpenter. The future prospects are computed by taking average of Rs. 4,500/- and its double which comes to Rs. 6,750/- [(Rs. 4,500 + Rs. 9,000)/2].

8. The deceased was survived by his widow aged 24 years, minor son aged 3 1/2 years, minor daughter aged 11 months and parents 66 years and 62 years at the time of the accident. The deduction of 1/3rd is not a thumb rule. Deduction towards the personal expenses of the deceased is taken to be 1/4th instead of 1/3rd. The loss of dependency is computed as Rs. 10,32,750/- (Rs. 6,750 x 3/4 x 12 x 17).

9. The learned Tribunal has not awarded any compensation towards loss of love and affection. Rs. 10,000/-is awarded to the appellants towards loss of love and affection.

10. The appellants are entitled to total compensation of Rs. 10,62,750/- (Rs. 10,32,750 + Rs. 10,000 + Rs. 10,000 + Rs. 5,000 + Rs. 5,000).

11. The appeal is allowed and the compensation is enhanced from Rs. 4,42,076/- to Rs. 10,62,750/- along with interest @ 9% per annum. The rate of interest on the original award amount of Rs. 4,42,076/- from the date of filing of the petition till payment is not disturbed. However, on the enhanced amount of Rs. 6,20,674/-, the appellants shall be entitled to interest @ 7.5% per annum from the date of filing of the petition till realization.

12. Respondent No. 3 is directed to deposit the enhanced amount along with interest thereon with the learned Tribunal within 30 days. The share of the appellant in the enhanced award amount shall be as under:

Appellant No. 1 : 60% Appellant Nos. 2 to 5 : 10% each

13. The shares of appellant Nos. 4 and 5 be released to them. The shares of the appellant Nos. 2 and 3, who are the minor children, be kept in a fixed deposit till they attain majority or for a period of 10 years whichever is later on which the periodical interest be paid to them. However, no loan, advance or withdrawal be permitted without permission to the learned Tribunal.

14. With respect to the share of appellant No. 1, 25% of her share be released to her and the remaining 75% of the award amount be kept in a fixed deposit for a period of 5 years on which the periodical interest be paid to her. However, no loan, advance or withdrawal be permitted without permission of the learned Tribunal.

