(2013) 12 DEL CK 0295

In the Delhi High Court

Case No : Mac. A. No. 435 of 2013

Nanhi and Others — APPELLANT

Vs

United India Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0295

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Anshuman Bal, for the Appellant; Vaidant Chadha and Mr. Sameer Nandwani, for R1, Ms. Avnish Ahlawat and Ms. Chandni Mehta for R3, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 06.02.2013, whereby ld. Tribunal has granted compensation for a sum of Rs. 8,62,534/- with interest @ 7.5% per annum from the date of filing of the petition till realization. Vide the present appeal, appellants are seeking enhancement of the compensation amount as noted above.

2. Ld. Counsel appearing on behalf of the appellants/claimants argued that the claimants failed to prove the salary certificate, therefore ld. Tribunal has considered the monthly income of the deceased as Rs. 5,278/- as per the minimum wages applicable to a unskilled person on the date of accident.

3. Ld. Counsel submits that the age of the deceased on the date of accident was 30 years. Despite that the ld. Tribunal has not added future prospects in the income of the deceased.

4. Ld. Counsel has relied upon a case of Rajesh and Others Vs. Rajbir Singh and Others, , wherein the Full Bench of the Apex Court has held as under:

11. Since, the Court in Santosh Devi''s case (supra) actually intended to follow

the principle in the case of salaried persons as laid in Sarla Verma''s case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma''s case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

5. Ld. Counsel further submits that there were five dependents at the time of death of the deceased. However, the mother of the deceased died during the pendency of the appeal. Therefore, four legal representatives are left as dependents.

6. He further submits that ld. Tribunal has granted compensation as Rs. 25,000/- towards loss of love and affection, Rs. 10,000/- towards loss of consortium and Rs. 10,000/- towards funeral expenses, which are on a very lower side. He submits that keeping in view the observation made by the Apex Court in Rajesh (Supra) the amount has to be enhanced as Rs. 1,00,000/- for loss of love and affection, Rs. 1,00,000/- for loss of consortium and Rs. 25,000/- towards funeral expenses.

7. On the other hand, ld. Counsel appearing on behalf of the respondent/ insurance company submits that claimants failed to prove the income of the deceased as he was not on a permanent employment, therefore, ld. Tribunal has considered Rs. 5,278/- as the income of the deceased as per the minimum wages applicable to a unskilled person at the relevant time, thus ld. Tribunal rightly not added future prospects. Ld. Counsel has relied upon a case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, which has been further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr. delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013.

8. As the issue of future prospects is concerned, this issue is no more res-integra as has been decided by the Full Bench of the Apex Court in the case of Rajesh (Supra) and the same has been followed by this Court in the case of MACA No. 846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.

9. In the case in hand, deceased was 30 years of age at the time of accident therefore he is entitled for 50% towards future prospects.

10. As the compensation towards non-pecuniary benefits are concerned, ld. Tribunal has taken into consideration 5 dependents, i.e., wife, three minor children and mother, despite, granted compensation on a lower side.

11. Presently, there are four dependents as the mother of the deceased died during the pendency of the appeal. Therefore, I enhance compensation towards loss of love and affection as Rs. 1,00,000/-, Rs. 1,00,000/- for loss of consortium and Rs. 25,000/- towards funeral expenses.

12. Therefore, the compensation comes as under:

13. Hence, the enhanced compensation comes to Rs. 5,83,818 (Rs. 14,46,352-Rs. 8,62,534), which shall also carry interest @ 7.5% per annum from the date of filing of the petition till realization.

14. Respondent no. 3/Insurance Company is directed to pay the enhanced compensation amount with interest accrued thereon within six weeks from today with Registrar General of this Court. Failing which appellants shall be entitled for penal interest @ 12% per annum on delayed payment.

15. On deposit, the Registrar General is directed to release the enhanced compensation amount with interest in favour of the appellants/claimants. In view of above, appeal is allowed.