(2014) 09 DEL CK 0464

In the Delhi High Court

Case No : MAC App. 760, 849, 709, 758 and 761/2010

National Insurance Co. Ltd. and Others APPELLANT

Vs

Kamlesh and Others RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0464

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Shantha Devi Raman, Advocates for the Appellant; O.P. Mannie, Advocates for the Respondent

Judgement

Jayant Nath, J.

MAC. APP. No. 760/2010 & MAC. APP. No. 849/2010

1. Both the present appeals arise out of a common Award dated 4.8.2010. MAC App. No. 760/2010 is an appeal filed by the Insurance Company seeking recovery rights from the owner of the offending vehicle respondent No. 8. MAC. App. No. 849/2010 is an appeal filed by the appellants/claimants seeking enhancement of the compensation amount.

2. The brief facts that give rise to the two appeals are that Shri Santosh Kumar the deceased died in a road accident on 20.08.2005. The deceased was travelling in a Wagon R from Dhanora Village to Delhi. When their vehicle reached Village Luharli G.T. Road, the offending vehicle a truck driven by respondent No. 7 in a rash and negligent manner hit the Wagon R which was dragged and two persons including the deceased died on the spot. The other person who died was Devender Singh. MAC App. 709/2010 and 761/2010 pertain to the claim petition filed by his dependents. Based on the evidence of the parties the Tribunal awarded loss of dependency of Rs. 10,92,042/-.

The total compensation awarded for non-pecuniary damages reads as follows:--

"i) Loss of love and affection Rs. 10,000/-

ii) Loss of consortium Rs. 10,000/-

iii) Loss of estate Rs. 10,000/-

iv) Funeral charges Rs. 10,000/-"

3. Hence, a total compensation of Rs. 11,32,042/- was awarded.

4. I will first deal with MAC. APP. 760/2010 filed by the insurance company. It is the submission of the learned counsel appearing for the insurance company that the Tribunal ought to have granted recovery rights from the owner of the offending vehicle. She submits that the driver of offending vehicle respondent No. 7 did not have a valid driving license and further that the vehicle in question of respondent No. 8 did not have a valid permit. She relies on the evidence of R3W1 to state that there was no permit available.

On the other hand, Learned counsel for the owner of the offending vehicle has submitted that the evidence of R3W3 clearly shows that the permit was not summoned. He states that the insurance company itself has shown the permit valid from 22.8.2005. The testimony of R3W3 does not show that there was no permit prior to this date.

On a suggestion by this court to now produce the original permit or to produce attested copy of the permit he states that the driver has passed away and that the permit for that period is not readily available.

5. Based on the evidence of R3W1, the Tribunal concluded that there is a valid permit effective from 22.08.2005 (date of the accident is 20.8.2005). The Tribunal, however, held that in the manner in which R3W1 has given his evidence, it is apparent that the said witness has brought the record that was summoned from him and that the insurance company did not summon the requisite permit as valid on 20.08.2005. Similarly, on the issue of driving license the Tribunal has concluded that the appellant has not been able to prove that the driving license of respondent No. 7 was not valid.

6. We may look at the evidence of R3W1 Shri Anil Kumar, Junior Clerk, RTO Office, Industrial Area, Near Lal Kuan, Ghaziabad, U.P. Relevant portion of his evidence reads as follows:--

"I could not bring the summoned record i.e. record of permit in respect of truck No. UP 13A 7117 for the date 20.8.2005. I have brought permit of above mentioned vehicle, which was valid for the period from 22.8.2005 to 21.8.2010. Photostat copy of the permit is Ex. R3W1/A. (original seen and returned).

No record in my office is available for the date 20.8.05."

xxx

"I have not brought any other record in respect of road tax and good''s tax. Road tax and good''s tax are deposited at ARTO Office, Bulandshahar, U.P. I have not brought any other record of permit because no such record was summoned. The above mentioned permit was valid only for territory of UP. I am not able to answer the question about issuance of permit prior to the period in dispute. Vol. because no such record was summoned. The permit was issued on 22.8.05. Rs. 4900/- was taken as fees for permit. No late payment was taken. As per the record brought by me no permit for 20.8.05 was issued for above mentioned vehicle. It is wrong to suggest that I have not brought the complete record in respect of above mentioned vehicle. It is wrong to suggest that I am deposing falsely."

7. The way Mr. Anil Kumar, R3W1 has given his evidence it is clear that his evidence cannot be relied upon. He states that he has got the permit valid from 22.8.05 to 21.8.10. At another place he states that no record in his office is available for 20.8.05. He further again clarifies that he has not brought any other record of permit because no such record was summoned. He further states that he is unable to answer the question about issuance of permit prior to the period in dispute because no such record was summoned. Clearly, his evidence is contradictory and confusing. Nothing can be made out from the same.

8. There is merit in the contention of learned counsel for the owner that the appellant insurance company has failed to prove that the permit of the offending vehicle was not valid on the date of the accident. What is clearly on record is that a permit was available for the period 22.8.2005 to 21.8.2010. It is not clear from the evidence on record as to whether any other permit existed prior to this date of 22.8.2005 or not.

9. I will now deal with the issue of the driving licence. The driving license of respondent No. 7 driver is on record, namely, M203 DIRT-58 valid for the period 3.11.04 to 2.11.07. It is issued by the concerned authority from Bulandshahar.

10. The appellant insurance company has summoned R3W3 Shri Subhash Chand, Junior Clerk from Meerut. He has said that the original record is not available with their office as it pertains to Bulandshahar.

11. In view of the above testimony, it is clear that the appellant company has failed to prove that the driving license of the driver of the offending vehicle was fake or invalid. In fact the driving license is on record with the Tribunal. There is no reason to hold that the driver of the offending vehicle respondent No. 7 did not have a valid driving license.

12. Reference may be had to the judgment of the Supreme Court in the case of Kamala Mangalal Vayani and Others Vs. United India Insurance Co. Ltd. and Others, which held as follows:

"4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence."

13. In view of the evidence on record and the judgment of the Supreme Court, it is not possible to grant recovery rights in favour of the appellant insurance company.

14. Hence, the appeal of the insurance company MAC. APP. No. 760/2010 is without merits and stands dismissed.

15. In case any statutory amount was deposited at the time of filing of the appeal same may be refunded to the appellant.

MAC. APP. No. 849/2010

16. The appellant/claimant seeks enhancement of compensation. Learned counsel appearing for the claimants has urged that the deceased on the date of the accident was 39 years and 11 months old. He submits that the salary of the deceased was assessed based on his Income Tax Returns at Rs. 1,04,004/- per annum. However, while computing loss of dependency no future prospects were added and the assessed salary of the deceased was not enhanced. He submits that as the deceased was under 40 years there should be enhancement by 50% for future prospects. He further submits that the multiplier has been wrongly used as 14 whereas it should have been 15. He lastly submits that non pecuniary damages have been given on a very much lower side. He relies upon the judgment of the Supreme Court in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, which was also an accident pertaining to the year 1996 where the Supreme Court awarded loss of consortium and loss of estate of Rs. 1 lac, Loss of love and affection for the daughter at Rs. 2 lacs, Loss of love and

affection for the widow and mother at Rs. 1 lac each.

17. A perusal of the award shows that the date of birth of the deceased is accepted as 4.7.1965. The accident took place on 20.8.2005. Hence, the deceased was one month short of completing the age of 40 years.

18. The claimants had filed the ITR for the Assessment Year 2002-2003 which showed his income as Rs. 1,04,004/-. This ITR was filed on 27.7.2004. As the ITR was filed prior to the death of the deceased the Tribunal accepted the said ITR and took the income as Rs. 1,04,004/- per annum of the deceased. The Tribunal thereafter deducted 1/4th of the income for expenses on self as the Tribunal concluded that the deceased had five dependents. The Tribunal used the multiplier of 14 and calculated the compensation for loss of dependency as Rs. 10,92,042/-.

19. Coming to the first submission of learned counsel for the appellant pertaining to future prospects, there is merit in the said contention of learned counsel for the appellant. The Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, held that the future prospects of 50% should be awarded to those who are self employed up to the age of 40 years and held that in case of self employed person with fixed wages where 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. This addition should be 30% in case the deceased was of the age group of 40-50 years and where the deceased was in the age group of 50-60 years and above it should be 15%.

20. In the light of the above judgment in my opinion it would be just and proper to give future prospects of 30% in the facts and circumstances of the present case. The deceased was just one month short of attaining the age of 40 years. Keeping in view the said ratio it would be appropriate that the future prospects be added at 30%.

21. The multiplier would be 15 and not 14 as taken by the Tribunal. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court had stated that the multiplier of 15 should be used for the deceased aged between 36-40 years and it should be 14 when the age of the deceased is between 40-45 years. Hence, 15 would be the applicable multiplier in the facts and circumstances of the case. Hence, the loss of dependency amounts to Rs. 15,21,060/- [(104004 + 30% - 1/4) x 15].

22. Coming now to the non pecuniary damages keeping in view the ratio of the judgment of the Supreme Court in the cases of Rajesh & Ors. v. Rajbir Singh & Ors.(supra), Vimal Kanwar & Ors. v. Kishore Dan & Ors.(supra) and Yerramma Vs. G. Krishnamurthy, , I enhance the compensation for loss of love and affection from Rs. 10,000/- to Rs. 1,00,000/- and for loss of consortium from Rs. 10,000/- to Rs. 1,00,000/-.

23. Compensation amount would now be as under:--

24. The enhanced compensation alongwith interest @ 6% per annum from the date of filing of the claim petition till deposit in Court would be deposited by the Insurance Company before the Registrar General of this Court. The said amount may be released to the claimants proportionately in the same proportion as provided for in the award of the Tribunal.

25. The present appeal MAC. APP. No. 849/2010 stands disposed of.

MAC. APP. 709/2010 & MAC. APP. 761/2010

26. These claim petitions were filed pursuant to the death of Shri Devender Singh who also was travelling in the Wagon R. Both the present appeals arise out of a common Award also dated 4.8.2010. MAC App. No. 761/2010 is an appeal filed by the Insurance Company seeking recovery rights from the owner of the offending vehicle respondent No. 10. MAC. App. No. 709/2010 is an appeal filed by the appellants/claimants seeking enhancement of the compensation amount.

27. MAC. APP 709/2010 was filed pursuant to the death of Shri Devender Singh. The deceased Devender Singh died in the fatal accident that took place on 20.8.2005. He was driving the Wagon R which was hit by the offending vehicle. He also died on the spot.

28. The Tribunal noted that the deceased was a bachelor and the claim petition has been filed by his parents aged 65 and 62 years. The Tribunal took the multiplier based on the average age of the parents. The Tribunal noted that the deceased was earning Rs. 5,500/- per month and was said to be working for Golden Fruit Centre. As no specific proof was placed on record regarding the alleged salary of the deceased, the Tribunal took the income based on the minimum wages of an unskilled person i.e. Rs. 3166/- per month. The said amount was enhanced by 50% for future benefit, 50% was deducted towards expenditure on self. Accordingly loss of dependency was assessed at Rs. 1,99,458/-. Apart from that the Tribunal awarded Rs. 10,000/- for loss of love and affection, Rs. 10,000/- for loss of estate and Rs. 10,000/- for funeral expenses. Hence, the total compensation of Rs. 2,29,458/- was awarded.

29. This matter was argued in the end. Learned counsel appearing for the appellant at the last stage of arguments sought an adjournment stating that the main counsel is in some difficulty. As the other connected matters had already been heard at length the request of learned counsel for the appellant was declined.

30. Another reason why I am inclined to decline the request for adjournment was that in any case the learned counsel for the appellant had already argued MAC. APP. No. 849/2010 for enhancement of compensation in a connected matter and have made detailed submissions in that case.

31. Coming to the facts of the present case, in my opinion, the Tribunal has used the wrong multiplier for the purpose of assessing compensation for the deceased.

32. Reference may be had to the judgment of this Court in the case of Mohd. Hasnain and Others Vs. Jagram Meena and Others, which held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

33. This Court in the said case of Mohd. Hasnain & Ors. v. Jagram Meena & Ors (supra) relied on the judgments of the Supreme Court in case of M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, and the case Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, : . In the later case, the Supreme Court held as follows:--

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation."

34. M. Mansoor v. United India Insurance Co. Ltd. (supra) was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of Amrit Bhanu Shali & Ors. v. National Insurance Co. Ltd. & Ors. (supra) the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17.

35. Accordingly the multiplier to be used would be based on the age of the deceased. He was said to be 24 years of age.

36. Accordingly, keeping into account the judgment of the Supreme Court in the case of Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., (supra) the multiplier of 18 would be used. Loss of dependency hence amounts to Rs. 5,12,784/- [(3166+50% -1/2) x 12 x 18].

37. Coming now to the non pecuniary damages keeping in view the ratio of the judgment of the Supreme Court in the cases of Rajesh & Ors. v. Rajbir Singh & Ors.(supra), Vimal Kanwar & Ors. v. Kishore Dan & Ors.(supra) and Yerramma Vs. G. Krishnamurthy, , I enhance the compensation for loss of love and affection from Rs. 10,000/- to Rs. 1,00,000/-.

38. Total compensation amount would now read as under:--

39. The enhanced compensation alongwith interest @ 6% per annum from the date of filing of the claim petition till deposit in Court would be deposited by the Appellant/Insurance Company before the Registrar General of this Court. The said amount may be released to the claimants proportionately in the same proportion as provided for in the award of the Tribunal.

40. The present appeal MAC. APP. No. 709/2010 stands disposed of.

41. Coming now to MAC. APP. 761/2010. The Insurance Company raises the same contentions in this appeal as raised in MAC. APP. 760/2010 which has already been dismissed by this Court as above. This appeal also stands dismissed

in view of the same.

MAC. APP. 758/2010

42. This appeal was filed pursuant to the death of Shri Badal Singh arising out of Award dated 04.08.2010. The deceased Badal Singh also died in the accident that took place on 20.8.2005. He was in the Wagon R which was hit by the offending vehicle and also died on the spot.

43. The Tribunal in this case took the salary of the deceased as minimum wages of an unskilled person on the date of the accident i.e. Rs. 3,160.90. The Tribunal added 50% towards future prospects and further, half of the salary was deducted towards expenditure on self as the deceased was a bachelor aged 24 years a multiplier of 9 was applied taking into consideration the age of the mother of the deceased. The loss of dependency was thus calculated as Rs. 2,56,438/-. For non-pecuniary damages the Tribunal awarded Rs. 10,000 for love and affection, Rs. 10,000 for loss of estate and Rs. 10,000 as funeral charges. Thus, the total compensation as awarded is Rs. 2,86,438/-.

44. By this appeal the Insurance Company seeks recovery rights from the owner of the offending vehicle respondent No. 3. This appeal also raises the same grounds as raised in MAC. APP. 760/2010. The same has already been dealt with above. In view of the order passed in MAC. APP. 760/2010 this appeal also stands dismissed.

45. Statutory amount, if any, paid by the Insurance Company at the time of filing of their appeals be refunded.