(2012) 03 DEL CK 0493

In the Delhi High Court

Case No : MAC. App. No. 685 of 2005

National Insurance Co. Ltd. APPELLANT

Vs

Rajni Manocha and Others RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:
Evidence Act, 1872 — Section 114

Citation : (2012) 188 DLT 792 : (2012) 4 TAC 148

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

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant;

Final Decision : Dismissed

Judgement

J.R. Midha

1. The appellant has challenged the order of learned Tribunal whereby the compensation of Rs. 6,11,776/- has been awarded to the respondents. The appellant seeks reduction of the award amount. The accident dated 28th February, 2004 resulted in the death of Jatin Manocha. The deceased was aged 21 years at the time of the accident and was survived by his parents who filed the claim petition before the Claims Tribunal.

2. The deceased was a commerce graduate from Delhi University. The deceased was self-employed and engaged in the business of sale and purchase of automobile spare parts on commission basis at the time of the accident. It was claimed that the deceased was earning Rs. 7,500/- to Rs. 9,000/- per month from his occupation. However, in the absence of any documentary proof of income, the Claims Tribunal took the minimum wages of Rs. 3,700/- per month, added 50% towards future prospects, deducted 50% towards personal expenses of the deceased and applied the multiplier of 14 to compute the loss of dependency at Rs. 4,66,200/-. The Claims Tribunal awarded Rs. 20,000/- towards loss of love and affection, Rs. 1,20,576/- towards medical expenses and

Rs. 5,000/- towards funeral expenses. The total compensation awarded is Rs. 6,11,776/-.

3. The learned counsel for the appellant has made the following submissions at the time of hearing of this appeal:-

(i) The accident has occurred due to composite negligence of the car bearing No. DL-6CG-8055 and truck bearing No. UP-15P-2658 and, therefore, the recovery rights to the extent of 50% be given to the appellant against the driver, owner and insurance company of the car.

(ii) The occupation and income of the deceased were not proved and, therefore, the minimum wages should not have been taken into consideration for computing the income of the deceased.

4. The deceased was travelling in car bearing No. DL-6CG-8055 on 28th February, 2004. The car was being driven by Vaibhav Ahuja who appeared in the witness box as PW-1 and deposed that he was taking a right turn on the T - point intersection of G.T. Road and had crossed almost two-third of the road when the truck bearing No. UP-15P-2658 driven at a very fast speed came on the wrong lane of road and hit the car. The FIR was registered against truck driver. The FIR, site plan, recovery memo, inspection report of the car bearing No. DL-6CG-8055 and truck bearing No. UP-15P-2658 were proved as Ex.P1/10 to Ex.P1/16. The police filed a chargesheet against the driver of the truck which was proved as Ex.P1/17. The driver of the truck did not appear in the witness box to rebut the evidence of PW-1. In that view of the matter, the finding of the Claims Tribunal with respect to rash and negligent driving of the truck does not suffer from any infirmity.

5. With respect to the occupation and income of the deceased, the mother of the deceased appeared in the witness box as PW-4 and deposed that her son was a commerce graduate from Delhi University. The copies of the secondary school, senior secondary school and consolidated statement of marks of B.Com. were proved as Ex.PW1/3 to Ex.PW1/5. PW-4 further deposed that her son was self-employed in the business of automobile spare parts and used to supply spare parts on commission basis. The deceased used to purchase automobile spare parts from the wholesale markets at Kashmere Gate, Karol Bagh and used to supply them to the suppliers or dealers on commission basis. PW-4 further deposed that the deceased was earning Rs. 7,500/- to Rs. 9,000/- per month and his business was expanding. PW-4 further deposed that the deceased was looking for a shop in Karol Bagh area and his income was expected to increase to Rs. 25,000/- to Rs. 30,000/- per month. Since there was no documentary proof of income, the Claims Tribunal took the minimum wages of Rs. 3,700/- into consideration and added 50% thereon. The income of the deceased was taken to be Rs. 5,500/- per month. Considering that the deceased was a graduate from Delhi University and was self-employed in the business of automobile spare parts, the income of the deceased can be presumed to be Rs. 5,500/- per month

u/s 114 of the Indian Evidence Act without resorting to the minimum wages. In that view of the matter, the income of Rs. 5,500/- taken by the Claims Tribunal is just, fair and reasonable and does not warrant any interference. The deceased was aged 21 years and his parents were aged 44 and 49 years at the time of the accident. The appropriate multiplier according to the age of the mother is 14 which has been applied by the Claims Tribunal. The loss of dependency of Rs. 4,66,200/- taken by the Claims Tribunal is just, fair and reasonable and does not warrant any interference.

6. The Claims Tribunal has not awarded any compensation for loss of estate and has awarded interest @6% per annum whereas the appropriate rate of interest should have been 9% per annum in terms of the judgment of the Supreme Court in the case of Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, . However, considering that there is no appearance on behalf of the respondents and that the respondents have not filed any cross-objections, the enhancement is not warranted.

7. For the reasons as aforesaid, the appeal is dismissed. No costs.

8. The LCR be sent back forthwith. The copy of this judgment be sent to respondent Nos. 1 and 2.

