(2012) 05 DEL CK 0218

In the Delhi High Court

Case No : MAC.APP. 405 of 2011

National Insurance Company Ltd — APPELLANT

Vs

Babita Devi — RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2012) 05 DEL CK 0218

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

Bench : Single Bench

Advocate : M.R. Sinha, for the Appellant; O.P. Mannie, for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

G. P. MITTAL, J.—The Appeal is for reduction of compensation of Rs. 14,09,400/- awarded for the death of Rajeev who died in a motor accident, which took place on 20.05.2010. The deceased was employed as a fitter with M/s. Hindustan Investigation & Security System and was getting a salary of Rs. 6099/- per month. It was proved on record that he was matriculate and had obtained a National Trade Certificate from the Department of Industrial Training & Vocational Education, Haryana, in the trade of fitter. The Claims Tribunal accepted the deceased''s salary to be Rs. 6099/- , added 50% towards the future prospects, deducted 1/3rd towards the personal and living expenses and applied multiplier of ''17'' appropriate to the deceased''s age to compute the loss of dependency as Rs. 12,44,400/- . A sum of Rs. 1,65,000/- was added towards non-pecuniary damages.

2. The following contentions are raised on behalf of the Appellant.

(i) The Claims Tribunal erred in adding 50% towards future prospects.

(ii) A sum of Rs. 1,00,000/- awarded towards loss of consortium was excessive and exorbitant.

(iii) Compensation of Rs. 50,000/- awarded towards loss of love and affection is excessive.

3. From the salary certificate Ex.PW-1/5 it was established that the deceased was in permanent employment with Investigation and Security Services. He was contributing towards PF and ESI and was a qualified fitter. The Claims Tribunal was justified in making addition of 50% towards future prospects.

4. Only a conventional sum of compensation is awarded towards the loss of consortium. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court laid down the principle that normally a sum of Rs. 5,000/- to 10,000/- is awarded towards loss of consortium. In the instant case, the Claims Tribunal awarded a sum of Rs. 1,00,000/- under this head, which is exorbitant and excessive. The same is reduced to Rs. 10,000/- only in consonance with Sarla Verma (supra).

5. 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.

6. It is urged by the learned counsel for the Respondents (the Claimants) that no compensation has been awarded towards loss to estate.

7. Under Order XLI Rule 22 CPC the Respondents can resist the Appeal for enhancement of compensation by claiming that the compensation awarded under a particular head is low or that the compensation has not been awarded under a particular head. A reference may be made to Jayakodi & Ors. v. Branch Manager, NIC & Anr., Civil Appeal No. 401/2008 (arising out of SLP (Civil) No. 13746/2004 decided on 11.01.2008).

8. In view of the above discussion, the overall compensation is reassessed as under:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

Awarded by this Court

1.

Loss of Dependency

Rs. 12,44,400/-

Rs. 12,44,400/-

2.

Loss of Consortium

Rs. 1,00,000/-

Rs. 10,000/-

3.

Love and Affection

Rs. 50,000/-

Rs. 25,000/-

4.

Funeral Expenses

Rs. 15,000/-

Rs. 15,000/-

Total

Rs. 14,09,400/-

Rs. 12,94,400/-

9. The overall compensation is thus reduced from Rs. 14,09,400/- to Rs. 12,94,400/- .

10. The amount of Rs. 12,94,400/- with interest @ 7.5% per annum shall be released in favour of the Respondents No. 1 to 3.

11. The award amount shall be held in fixed deposits in terms of order passed by the Claims Tribunal.

12. The excess amount of Rs. 1,15,400/- along with the proportionate interest and the interest, if any, accrued during the pendency of the Appeal, shall be refunded to the Appellant Insurance Company

13. The statutory amount of Rs. 25,000/- shall also be refunded to the Appellant. The Appeal is allowed in above terms.