(2012) 07 DEL CK 0298

In the Delhi High Court

Case No : MAC. APP. 509 of 2010

National Insurance Company Ltd. APPELLANT

Vs

Mankala Resmi and Others RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) 07 DEL CK 0298

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

Bench : Single Bench

Advocate : Manoj R. Sinha, for the Appellant;

Judgement

G.P. Mittal, J.—The Appellant National Insurance Company limited impugns a judgment dated 14.05.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 4,89,500/- was awarded in favour of Respondents No. 1 to 4 for the death of Hem Bahadur Resmi who died in a motor vehicle accident which occurred on 20.07.1997. Following contentions are raised on behalf of the Appellant Insurance Company:-

(i) The deceased was a gratuitous passenger and the Appellant Insurance Company had no liability.

(ii) Even if, the Appellant Insurance Company was liable, the compensation ought to have been awarded strictly as per the structured formula given in the second schedule and no addition towards the future prospects could have been given by the Claims Tribunal.

2. Ms. Mankala Resmi, the deceased''s wife filed her Affidavit and entered the witness box as PW-1. Her testimony that on 20.07.1997 her husband was on duty on truck No. DL-1GA-7323 was not challenged in cross-examination. She was not given any suggestion that her husband was not working on this truck and that he was a gratuitous passenger.

3. The contention raised in this regard is devoid of any merit and is bound to be rejected.

4. As far as second contention is concerned, it is well settled that in a Claim Petition u/s 163-A of the Motor Vehicles Act, 1988 (the Act) the compensation has to be awarded as per the structured formula. The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., ; and Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda,

5. The Claims Tribunal was, therefore, not justified in making addition of 50% towards the future prospects.

6. Minimum Wages of an unskilled worker at the time of the accident were about Rs. 1900/- per month. The Claims Tribunal took the deceased''s income to be Rs. 2,000/- per month. On this income, the loss of dependency, as per the structured formula comes to Rs. 2,88,000/- (2,000/- x 12 x 2/3 x 18)

7. In addition, the Claimants would be entitled to compensation of Rs. 9,500/- i.e. towards non-pecuniary heads (Rs. 2,500/- towards loss to estate, Rs. 5,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses). The compensation thus comes to Rs. 2,97,500/-.

8. The overall compensation stands reduced from Rs. 4,89,500/- to Rs. 2,97,500/- which shall carry interest @ 7.5 % per annum from the date of filing of the Petition till its payment.

9. The excess amount of Rs. 1,92,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

10. The compensation payable to the Respondents No. 1 to 4 shall be released in terms of the order passed by the Claims Tribunal.

11. The Appeal is allowed in above terms.

12. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.