(2011) 08 DEL CK 0101

In the Delhi High Court

Case No : MAC. APP. 39 of 2009

National Insurance Company Ltd. APPELLANT

Vs

Smt. Santosh and Others RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2011) 08 DEL CK 0101

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This appeal is directed against the judgment and award dated 29th September, 2008 of Presiding Officer, MACT. On 03.03.2002 a jeep, driven by driver Kirpal Singh @ Pappu, at a fast speed and in a rash and negligent manner hit Jai Pal who sustained serious injuries and ultimately succumbed to the injuries. The deceased was aged about 23 years and was stated to be working as Conductor at a salary of 5. With regard to the submission of learned Counsel for the Appellant that the salary was wrongly calculated, it may be noted that as per evidence, the deceased was a conductor and was getting Rs. 3,000/- per month as salary and Rs. 1,500/- per month as towards his monthly personal expenses. This payment of Rs. 1,500/- was attached with the nature of the job of the deceased as a conductor. This payment cannot be termed as ex-gratia payment. In view of the law laid down in the case of Sarla Verma (supra), since the deceased was not in a permanent stable job, his monthly income actually earned would be the basis for the assessment of the dependency loss. Though in view of the nature of job, there was no element of loss of future prospects, but the fact remains that we cannot be oblivious of the fact of all round inflationary trends and rise in prices, an estimated 30% can be added to his income towards rising prices index. Since the deceased was getting Rs. 1500/- per month towards his personal expenses attached to his job as a conductor, this amount cannot be taken to be as a forming part of his regular salary. In this way the regular monthly income of the deceased can be arrived at Rs. 4500+ Rs. 1500= `6000. Keeping in view the number of dependants of the deceased and his nature of job, 1/4th of his income can be deducted towards his personal and living expenses. In this view of the matter, the dependency loss of the claimant comes out to be Rs. 6000-1500= Rs. 4500/- per month keeping in view the age of the deceased as 23, a multiplier of 27 would be applicable as per the judgment of Sarla Verma (supra). Thus, the total amount on account of dependency loss comes out to be Rs. 54,000X17 = Rs. 9,18,000/-. To this, a sum of Rs. 22,000/- can be added towards funeral expenses and loss of love and affection as awarded by the Tribunal. In this way, the total amount towards dependency comes out to be Rs. 9,40,000/-. The Tribunal has rightly come to the conclusion in granting compensation of Rs. 9,40,000/- to the claimant. I do not find any infirmity in the impugned award. The appeal is hereby dismissed.3,000/- per month. FIR No. 100/2002 was registered in this regard at Police Station Vasant Kunj. The offending vehicle was stated to be owned by one Gurpal Singh Kalsi and was insured with the Appellant insurance company. The legal representatives namely wife, mother and two minor children of the deceased filed claim petition u/s 166/140 of M.V. Act for compensation against the Appellant, owner and driver of the offending vehicle. The Tribunal awarded compensation amounting to Rs. 9,40,000/-. In arriving at this amount of compensation, the Tribunal calculated annual loss of dependency taking the monthly income to be Rs. 4,500/- and assessed the future income of the deceased to be at Rs. 9,000/- per month and thereby took the average monthly income to be Rs. 6750/- per month (Rs. 4,500/- + Rs. 9,000/- = `13,500/- divided by 2 = Rs. 6,750/-). From this, the Tribunal deducted 1/3rd as towards the personal and living expenses of the deceased and the remaining amount of Rs. 4500/- per month (Rs. 54,000/- per annum) was taken as loss of dependency. A multiplier of 17 was applied to calculate the total loss of dependency which came to Rs. 9,18,000/- (Rs. 54,000/- x 17). To this, a sum of Rs. 22,000/- was added as towards funeral expenses and loss of love and affection. In this way, a total sum of Rs. 9,40,000/- was arrived at as compensation.

2. The impugned award is challenged by the Appellant insurance company on three grounds namely (i) the salary of the deceased was wrongly calculated; (ii) future prospects were wrongly assessed and (iii) much higher multiplier was applied.

3. The learned Counsel appearing for the Appellant placed reliance on the judgment of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . None appeared for the Respondent.

4. I have perused the record and heard learned Counsel for the Appellant.

5. With regard to the submission of learned Counsel for the Appellant that the

salary was wrongly calculated, it may be noted that as per evidence, the deceased was a conductor and was getting Rs. 3,000/- per month as salary and Rs. 1,500/- per month as towards his monthly personal expenses. This payment of Rs. 1,500/- was attached with the nature of the job of the deceased as a conductor. This payment cannot be termed as ex-gratia payment. In view of the law laid down in the case of Sarla Verma (supra), since the deceased was not in a permanent stable job, his monthly income actually earned would be the basis for the assessment of the dependency loss. Though in view of the nature of job, there was no element of loss of future prospects, but the fact remains that we cannot be oblivious of the fact of all round inflationary trends and rise in prices, an estimated 30% can be added to his income towards rising prices index. Since the deceased was getting Rs. 1500/- per month towards his personal expenses attached to his job as a conductor, this amount cannot be taken to be as a forming part of his regular salary. In this way the regular monthly income of the deceased can be arrived at Rs. 4500+ Rs. 1500= Rs. 6000. Keeping in view the number of dependants of the deceased and his nature of job, 1/4th of his income can be deducted towards his personal and living expenses. In this view of the matter, the dependency loss of the claimant comes out to be Rs. 6000-1500= Rs. 4500/- per month keeping in view the age of the deceased as 23, a multiplier of 27 would be applicable as per the judgment of Sarla Verma (supra). Thus, the total amount on account of dependency loss comes out to be Rs. 54,000X17 = Rs. 9,18,000/-. To this, a sum of Rs. 22,000/- can be added towards funeral expenses and loss of love and affection as awarded by the Tribunal. In this way, the total amount towards dependency comes out to be Rs. 9,40,000/-. The Tribunal has rightly come to the conclusion in granting compensation of Rs. 9,40,000/- to the claimant. I do not find any infirmity in the impugned award. The appeal is hereby dismissed.