
(2023) 05 DEL CK 0137
In the Delhi High Court
Case No : MAC.APP. No. 256 Of 2022

Neelam & Ors.

APPELLANT

Vs

Bajaj Allianz Insurance Company Ltd & Ors

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 05 DEL CK 0137

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Amit Kumar Singh, S.P. Jain

Final Decision : Allowed

Judgement

Rekha Palli, J

1. The present appeal preferred by the claimants under Section 173 of Motor Vehicles Act, 1988 seeks enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal vide it's impugned award dated 22.03.2022 passed in MACT No. 320/2017.

2. The only submission of learned counsel for the appellant is that even though the appellant no. 1 while appearing as PW-8 had categorically stated that her late husband Shri Ashok Kumar, who died in the fatal accident involving the insured vehicle, was carrying out the work of sofa repair in Delhi, the learned Tribunal has erroneously taken into consideration the minimum wages applicable to an unskilled worker in Uttar Pradesh. He contends that once no suggestion was put to her during her cross-examination before the Tribunal that this statement of hers was incorrect, the Tribunal ought to have accepted her stand that her husband was carrying out the work of sofa repairs in Delhi and consequently taken into consideration the minimum wages as applicable in Delhi and not as applicable in the State of Uttar Pradesh, where the appellants reside. Furthermore, even as per the aadhar card of the deceased, he was a resident of

Delhi, which aspect has also been ignored by the learned Tribunal.

3. On the other hand, learned counsel for the respondent, supports the impugned award by urging that once the appellant did not lead any independent evidence to show that the deceased was working in Delhi, the Tribunal was justified in presuming that he was residing with his family in Uttar Pradesh i.e., where the appellants reside. He therefore contends that the Tribunal was justified in applying the minimum wages as applicable in the State of Uttar Pradesh.

4. In the light of the aforesaid rival submissions of the parties, the only question which needs to be determined by this Court is as to whether there was any material before the learned Tribunal to hold that the deceased was earning his livelihood in Uttar Pradesh. It is the appellant's plea that she had discharged the onus of proving that the deceased was working in Delhi by not only producing his aadhar card according to which he was based in Delhi but had also taken a categorical stand in her cross-examination that her late husband used to carry out sofa repair work in Delhi.

5. Once the factum of the aadhar card of the deceased depicting his address in Delhi is undisputed, the only other aspect which needs to be considered is the stand taken by the appellant no. 1 in her testimony before the Tribunal. In order to appreciate this aspect, it would be appropriate to refer to note in its entirety, the statement of the appellant no. 1 including her cross-examination. The same reads as under:

"11.10.2018

PW-8 Smt. Nee lam, w/o late Ashok Kumar, aged about 27 years, R/o 130, Pran Gari, Ghaziabad, UP-201001

I tender my evidence by way of affidavit which is Ex.PW8/A and bears my signature at point A and B. I rely upon the documents i.e. DAR already Ex.PW2/1, photocopy of my Adhar Card Ex.PW8/1, photocopy of school identity card of petitioner no.2 baby Ishika Ex.PW8/2, photocopy of school identity card of petitioner no.3 baby Harshita Ex.PW8/3, photocopy of school identity card of petitioner no.4 Master Bhanu Ex.PW8/4, death certificate of deceased is mark-PW8/A, photocopy of Adhar card of petitioner no.5 Seeto Devi is Mark-PW8/B, photocopy of Adhar card of petitioner no.6 Suman Narula is MarkPW8/C.

XXXX by Sh. Sandeep Singh, Id. Counsel for insurance company.

I was not present at the time of accident. The accident had occurred on 26.01.2017 at Vivek Vihar near patrol pump. My husband was working as Sofa repair at Delhi. He was earning on daily wages (vol. he was earning approximately Rs.2,000/- per day). I am residing at Ghaziabad, UP on rent at Rs.4,000-5,000/- per month. I have not filed any document regarding daily earning of my husband. My parents in law are not residing with me. It is wrong to suggest that I am deposing falsely.

XXXX by RI and R2.

Nil. Opportunity given for cross examination as none has appeared on behalf of RI and R2.

RO&AC"

6. From a perusal of the aforesaid, what emerges is that the appellant no. 1 had categorically stated before the learned Tribunal that the deceased was carrying out sofa repair work in Delhi. In her cross-examination, neither any question was put to her on this aspect nor was any suggestion made to appellant no.1 in respect of her statement that her late husband was carrying out sofa repair work in Delhi was incorrect. I therefore do not find as to why her stand that her late husband was earning his livelihood in Delhi should be disbelieved. Even otherwise, as per the aadhar card, the deceased was a resident of Krishna Nagar, Gandhi Nagar, East Delhi.

7. In the light of the aforesaid, I am of the considered view that the appellant no. 1 has duly discharged the burden of proof to show that the deceased was a resident of Delhi and was earning his livelihood in Delhi. Merely because his family was residing in Ghaziabad, would not be a ground to presume that he was also residing in Ghaziabad or to disbelieve the version of the appellants that the deceased was residing in Delhi to earn his livelihood. In fact, a perusal of the impugned award shows that this aspect has not even been examined by the learned Tribunal which has without any reason proceeded to apply the minimum wages as applicable in the State of Uttar Pradesh for determining the compensation towards loss of dependency on account of death of late Shri Ashok Kumar.

8. The learned Tribunal, therefore, erred in applying the minimum wages as applicable in the State of Uttar Pradesh while computing the compensation payable to the appellants towards loss of dependency. Consequently, the compensation granted under para 19(ii) of the impugned award stands modified. The compensation towards loss of dependency along with the future prospects is therefore required to be enhanced by taking the monthly income of the deceased as Rs. 9,724/- i.e., the minimum wages applicable to an unskilled labour in Delhi on the date of the accident as against the then minimum monthly wages of Rs.7,214.12/- as applicable in the State of Uttar Pradesh.

9. The impugned award is, accordingly, modified by enhancing the compensation towards loss of dependency and towards future prospects by Rs. 5,37,616/- i.e. from Rs.15,45,264.5/- to Rs.20,82,880/- as detailed herein below:

S.No.

Name of Heads

Compensation awarded by the Tribunal

Compensation by this Court

1.

Minimum wages

Rs. 7214.12/- per

month

Rs. 9,724/- per

month.

2.

Annual wages

Rs. 85,569/-

(Rs.7,214.12/- x 12)

Rs. 1,16,688/-

(Rs.9,724/- x 12)

3.

1/4th Deduction towards personal

expenses

Rs.64,927.08/- (85,569 / 4 x 3)

Rs.87,516/- (1,16,688/4 x 3)

4.

Multiplier of 17

applied by the Tribunal

Rs. 11,03,760.36/-

(Rs. 64,927.08/- x 17)

Rs. 14,87,722/- (Rs.87,516/- x 17)

5.

40% towards future prospects

Rs. 4, 41, 504.14/-

(40% of

11,03,760.36/-)

Rs. 5,95,108/-

(40% of

14,87,722/-)

6.

Total

Rs.15,45,264.50/- (Rs.11,03,760.36/- +

Rs.4,4,504.14/-)

Rs. 20,82,880/- (Rs.14,87,722/- +

Rs. 5,95,108/-)

10. The aforesaid amount will be payable to the appellants with interest @8 % per annum, as already directed by the learned Tribunal under the impugned award.

11. The appeal is allowed in the aforesaid terms.