(2004) 08 DEL CK 0096

In the Delhi High Court

Case No : F.A.O. No. 178 of 1990 and C.M. No. 1132 of 1991

New India Assurance Co. Ltd. APPELLANT

Vs

Amaresh Kumari and Others RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : (2005) ACJ 538

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Respondent

Judgement

R.S. Sodhi, J.—This appeal is directed against the judgment and order dated 26.4.1990 of the Motor Accidents Claims Tribunal in Suit No. 385 of 1986 whereby the learned Tribunal has awarded a sum of Rs. 3,81,000 together with 9 per cent interest from the date of filing of the petition till the date of realization.

2. The facts of the case as noted by the Tribunal are as follows:

The petitioners (claimants herein) have filed this petition against respondents for grant of compensation on account of death of Yogender Singh Narwat, husband of petitioner No. 1, in an accident that took place on 12.2,1986 at about 9.30 p.m. on Gurgaon Road Centaur Hotel. It is stated that the deceased was driving scooter No. HRV 3230 when he was struck by the offending vehicle, i.e., the car bearing No. DHX 8515 driven by respondent No. 1 rashly and negligently which came from behind at a fast speed and the deceased succumbed to the injuries on the spot.

The deceased was a young man of 28 years of age. He was qualified as M.A. (Economics) and was also having a postgraduate diploma in Journalism and was working as a Bank Manager in Gurgaon Gramin Bank and was drawing Rs. 1,579 per month. He left behind the petitioner No. 1 widow, petitioner No. 2 son and petitioner No. 3 father.

Respondent No. 2 is stated to be the owner of the said vehicle and respondent No. 3 is stated to be the insurer of the vehicle.

In the written statement filed by respondent Nos. 1 and 2, it is admitted that the accident was caused but it was denied that the same was caused by respondent No. 1. The involvement of the vehicle has been admitted.

It is stated that the accident was caused due to rash and negligent driving of the scooter by the deceased.

In the written statement filed by the respondent No. 3, preliminary objections were raised that there is no privity of contract. The petitioners are not the legal representatives of the deceased and driver was not holding a valid driving license that there was no insurable interest. Further, it is admitted that the vehicle was insured in the name of respondent No. 2.

Following issues were framed in this case:

(1) Whether deceased Yoginder Singh Narwat died in an accident which took place on 12.2.1986 due to the rash and negligent driving of car No. DHX 8515 driven by the driver-respondent No. 1 Chander Pal? OPP

(2) Whether the petitioners are legal representatives of the deceased? OPP

(3) Whether the petitioners are not entitled to pay any compensation in view of preliminary objection Nos. 4 and 5 of the written statement? OPR 4 and 5

(4) To what amount of compensation the petitioners are entitled and from whom?

(5) Relief.

3. It is contended by counsel for the claimants that the Tribunal went wrong in deducting 20 per cent of the lump sum payable on account of the wife of the deceased working in a bank. He submits that it is a settled law that such a deduction cannot be made. He submits that the Tribunal has not taken into consideration the loss of consortium and, Therefore, the order under challenge is bad.

4. Heard the counsel for the claimants. Nobody has put in appearance on behalf of the insurance company. With the assistance of learned counsel, I have carefully gone through the judgment under challenge and the material on record. I find that the Tribunal has deducted 20 per cent of the lump sum payable on account of the wife of the deceased working in a bank which, with great respect to the Tribunal, ought not to have been deducted. Further, counsel is right in pointing out that no amount on account of loss of consortium has been awarded. Under that head, I deem it appropriate to award a sum of Rs. 50,000. The amount payable would work out to Rs. 3,81,000 + Rs. 99,000 + Rs. 50,000, i.e., a total of Rs. 5,30,000.

5. The claimants would now be entitled to the additional amount together with a simple interest of 9 per cent per annum from the date of this order till the date

of realization. The enhanced amount shall be divided amongst the claimants in the proportion as has been done by the Tribunal.

6. With this F.A.O. No. 178 of 1990 is disposed of. C.M. No. 1132 of 1991 also stands disposed of.

