(2012) 05 DEL CK 0583

In the Delhi High Court

Case No : MAC.APP. 1075 of 2011

New India Assurance Co. Ltd. APPELLANT

Vs

Beni Madhab Das and Ors RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0583

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

Bench : Single Bench

Advocate : K.K. Bhat, for the Appellant; S. Ghosh, Advocate for the Respondents No. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

G. P. MITTAL, J.—The Appeal is for reduction of compensation of `71,28,574/- awarded for the death of Mitashree Das in an accident which occurred on 08.08.2010. It is proved on record and is not disputed by the Appellant that the deceased was a brilliant Scientist in Biotechnology (Genetics). She was aged 35 years at the time of the accident. She passed her B.Sc. and M.Sc. in 1996 and 1998 respectively from University of Rajasthan in First Class. She did her M.Phil. from Delhi University in the year 2002 in the First Division and registered herself as a Research Fellow for completing her Ph.D.

2. While doing her Ph.D., the deceased was conferred with the Young Scientist Award in 2008 by Indian Society of Human Genetics. During November, 2008 to October, 2009, she worked as a Research Fellow in the Centre for Neurogenomics and Cognitive Research (CNCR), Amsterdam, Netherland on a Fellowship of Euro 2000 excluding Holiday Allowance and Bonus @ 6.4%. Before completion of her Ph.D. in the University of Delhi, she was offered an annual package of Euro 41,288 by the Department of Clinical Genetics, Netherland for two years commencing from the date of her joining the department i.e. from October, 2010.

3. The deceased died before she could accept or reject the offer given by Dr. P.

Heutink, Department of Clinical Genetics, Netherland. Moreover, the offer of salary in a foreign country cannot be accepted to determine the loss of dependency without any evidence of liability towards Income Tax and personal and living expenses of the deceased.

4. The Claims Tribunal by the impugned judgment took the deceased''s Fellowship during the period November, 2008 to October, 2009 of Euro 2000, converted it into Indian currency, added 50% towards future prospects, deducted 50% towards personal and living expenses and applied a multiplier of 7 to compute the loss of dependency as `66,22,000/-.

5. It is urged by the learned counsel for the Appellant that although the deceased was a brilliant Scientist, she could have got employment in India as a Scientist on a salary of about `50,000/- per month. The compensation awarded on the basis of the Fellowship in Euros during the year 2008-09 was not reasonable as the deceased took up an assignment of Research Fellow with the University of Delhi on a monthly Fellowship of `18,200/-.

67. It has to be borne in mind that although the deceased was aged 35 years, she was in Academics, studying and carrying out research since the year 1998 when she passed out her M.Sc. At the same time, it has to be borne out that loss of dependency could not have been granted in favour of the Respondents No. 1 to 3 (the Claimants) on the basis of the Fellowship for Euro 2000 which was done by the deceased during the year 2008-09.

7. It is no longer res integra that the potential income of a professional can be taken into consideration to award the loss of dependency to the legal representatives.

8. In Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of `9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of ` 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ` 16,000/- per month to ` 25,000/- per month. Thus, the average monthly income of the deceased was taken as ` 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ` 21,36,000/-.

9. In Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006 decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineering (DCE) as ` 38,333/- per month.

10. A Division Bench of Andhra Pradesh High Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, held that it was very difficult to

determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take a salary fixed by the Government at the entry level for such jobs.

11. From the deceased''s profile, it was evident that she had opportunity to earn not only in this country but abroad as well. She had an offer for Euro 40000 per annum for a period of two years from the date of her joining the Department of Clinical Genetics, Netherland. In my view, with her research and experience of 12 years after her Post Graduation, she could have conveniently landed a job as an Assistant Professor in IIT or a Scientist at middle level in any department or public sector organization owned by the Government of India. In view of the Division Bench Judgment of Andhra Pradesh High Court in.Ramulamma(supra), it would be appropriate to take her potential salary as that of an Assistant Professor in IIT.

12. The starting salary of an Assistant Professor is in the Pay Scale of `15,600/- to 39,100/- who are placed with the Basic Pay of `30,000/- and a Grade Pay of `8,000/-. The total emoluments of an Assistant Professor are `77,300/- (Basic Pay `30,000/- + Grade Pay `8,000/- + Travel Allowance `3,200/- + Dearness Allowance (65%) `24,700/- + House Rent Allowance (30%) `11,400/-.

13. Since the deceased had an excellent Academic record and was a brilliant Scientist, she would be entitled to an addition of 50% towards future prospects on the basis of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

14. The Claims Tribunal had selected a multiplier of ''7'' as per the age of the deceased''s parents. The father is normally not considered as a dependent on an unmarried child. Although the deceased had an unmarried sister, she would also be not considered financially dependent on the deceased in the absence of any evidence with regard to the same. The appropriate multiplier, in the circumstances, would be 9 according to the age of the deceased''s mother(58 years on the date of the accident). Thus, after making a deduction of Income Tax on the amount excluding House Rent Allowance, making an addition of 50% towards future prospects, deducting 50% towards personal and living expenses, the loss of dependency would come to `58,68,720/- (`77,300/- x 12 =927600 - 58160 (Income Tax) + 50% x 1/2 x 9). The loss of dependency is thus reduced from ` 66,22,000/- to ` 58,68,720/

15. The overall compensation stands reduced from `71,28,574/- to `63,75,294/-.

16. By an order dated 01.12.2011, the execution of the award was stayed subject to deposit of 50% of the award amount along with upto date interest with State Bank of India, Saket District Court Branch. The Appellant Insurance Company is directed to deposit the balance amount along with interest @7.5% per annum as per the award by the Claims Tribunal in the name of the Appellants within six weeks with the State Bank of India, Saket District Court Branch.

17. The amount awarded shall be disbursed in favour of the Respondents No. 1 to 3 in terms of the impugned judgment dated 26.08.2011 passed by the Claims Tribunal.

18. The Appeal is allowed in above terms. The statutory amount of `25,000/- shall be refunded to the Appellant Insurance Company.

