(2012) 11 DEL CK 0037

In the Delhi High Court

Case No : MAC. APP. 548, 549 and 645 of 2011

New India assurance Co. Ltd. — APPELLANT

Vs

Bharti Goel and Others
 Bharti Goel and Others Vs Mohd. Nadeem Khan and Others — RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:
Income Tax Act, 1961 — Section 88

Citation : (2012) 11 DEL CK 0037

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

Bench : Single Bench

Advocate : Shivali Bansal in MAC. app. 548, 549 and 557/2011 and Mr. N.K. Jha in MAC. app. 645/2011, for the Appellant; N.K. Jha, Advocate for the Respondents No. 1 to 4 in MAC. APP. 548/2011, Mr. N.K. Jha, Advocate for the Respondent No. 1 in MAC. APP. 549 and 557/2011 and Ms. Shivali Bansal for the Respondent No. 3 Insurance Company in MAC. APP. 645/2011, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—These four Appeals (MAC. APP. 548/2011, MAC. APP. 549/2011, MAC. APP. 557/2011 and MAC. APP. 645/2011) arise out of a common judgment dated 30.03.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby three Claim Petitions being Suit No. 229/2010, Suit No. 230/2010 and Suit No. 232/2010 were allowed and compensation was awarded in favour of the Claimants for the injuries suffered by Baby Priyangana Goel(Suit No. 229/2010), Smt. Bharti Goel (Suit No. 230/2010) and for the death of Achal Goel (Suit No. 232/2010). The compensation awarded in the three Claim Petitions is extracted hereunder in a tabulated form:

2. The only ground of challenge raised in MAC. Appeals No. 548/2011, 549/2011 and 57/2011 is that this was a head-on collision between an Indica Car No. MP-09-HD-6137 being driven by deceased Achal Goel and Tata Truck 207 No. UP-92B-0620. Thus, it was a case of contributory negligence and the entire

liability to pay the compensation should not have been fastened on the insured and consequently on the Appellant being the insurer of the vehicle.

3. On the other hand, in Cross-Appeal (MAC. APP. 645/2011) preferred by the legal representatives of deceased Achal Goel it is stated that the compensation awarded is abysmally low. The Claims Tribunal erred in declining to believe the deceased''s income to be Rs. 20,000/- per month in spite of clear testimony of PW2 in this regard. In any case, the deceased annual income of Rs. 1,20,000/- from salary was proved by the Income Tax Returns for the previous two years. The deceased was in permanent employment of M/s. Som Projects Pvt. Ltd., he was, therefore, entitled to an addition of 50% on account of future prospects. Reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

NEGLIGENCE:

4. In order to prove the negligence, the Claimants examined PW1 Smt. Bharti Goel who was an occupant of the Indica Car and Petitioner in the two Claim Petitions. She was categorical that the accident was caused on account of rash and negligent driving of Tata Truck 207 No. UP-92B-0620. There was no rebuttal to PW1''s testimony as the driver and the owner of Tata Truck 207 No. UP-92B-0620 preferred not to contest the proceedings. The Appellant Insurance Company also did not lead any evidence to rebut PW1''s testimony.

5. The learned counsel for the Appellant drew my attention to the site plan prepared in the criminal case in support of her contention that it was a head-on collision. The site plan shows that the Indica Car was proceeding from West to East on the northern side of the carriageway which was meant for the traffic going towards East. The offending vehicle came on the wrong carriageway, that is, on the northern carriageway instead of the southern carriageway; perhaps, because of some construction work being carried on the southern carriageway. In such circumstances, it was the duty of the driver of the Tata Truck 207 No. UP-92B-0620 to be extra cautious as he had no right of way on the northern carriageway. As stated above, the driver of Tata Truck 207 No. UP-92B-0620 has not come forward to give any explanation or to rebut PW1''s testimony. In the circumstances, the Claims Tribunal''s finding on negligence cannot be faulted.

6. Consequently, MAC. APP. Nos. 548/2011, 549/2011 and 557/2011 are hereby dismissed.

7. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company.

8. Pending Applications stand disposed of.

9. A copy of the judgment be sent to the concerned Claims Tribunal for information.

QUANTUM:

10. The learned counsel for the Claimants has taken me through the testimony of Som Prakash Garg(PW2), Director, M/s. Som Projects Pvt. Ltd. and the salary certificate Ex. PW1/4. PW2 testified that the deceased Achal Goel was working in their company for the last about three years. He was promoted to the post of Project Manager on 21.03.2007 and was drawing a salary of Rs. 20,000/- per month. In cross-examination, the witness deposed that the deceased joined at a salary of Rs. 10,000/- per month and within three years, his salary was increased to Rs. 20,000/- per month. In cross-examination, the witness stated that no appointment letter is issued by their company to any employee. He deposed that the salary paid to all the employees of the company is reflected in the consolidated form in their Annual Return. He deposed that salary of Rs. 20,000/- per month was paid to the deceased Achal Goel in cash. He added that he had not brought the receipt of payment of salary of Rs. 20,000/-.

11. The deceased met with an unfortunate death in the accident which occurred on 23.06.2007. The Claimants have put forward a case that he was promoted w.e.f. 21.03.2007, that is, three months before the date of the accident. Apart from salary certificate Ex. PW1/4, no other document was proved to show that the deceased was getting a salary of Rs. 20,000/- per month. Although, PW2 claimed that the salary of the employees is reflected in its consolidated Return; the said consolidated Return was not produced by the Claimants. The Income Tax Returns filed for the A. Ys. 2006-07 and 2007-08 reveal that deceased Achal Goel received an income of Rs. 1,20,000/- annually. He had an income of Rs. 650/- from bank interest on the savings bank account. If his salary had increased from Rs. 10,000/- to Rs. 20,000/- per month, there would have been consequent increase reflected in the Income Tax Return for the A.Y. 2007-08, even may be for just ten days salary. In the circumstances, the Claims Tribunal rightly discarded the Claimant''s version that the deceased''s salary was Rs. 20,000/- per month.

12. The Claims Tribunal took the deceased''s salary to be Rs. 90,650/- per annum to compute the loss of dependency, deducted 1/4th towards personal and living expenses(considering the number of dependents to be 4) and applied a multiplier of 15 as the deceased was aged 36 years to compute the loss of dependency as Rs. 10,59,812/-. A perusal of the Income Tax Return reveals that the deceased got a rebate of Rs. 30,000/- in payment of Income Tax because of savings on this amount u/s 88 of the Income Tax Act. Even these savings could not have been deducted from the deceased''s income to compute the loss of dependency. Moreover, from PW2''s testimony Income Tax Return filed for the A. Ys. 2006-07 and 2007-08, it was established that the deceased was in permanent employment. He was a graduate from Delhi University and had obtained Post Graduate Diploma in Management from Indira Gandhi Open University. Taking all the circumstances together, the Claimants ought to have been granted an addition of 50% towards future prospects. The loss of dependency thus comes to Rs. 20,08,125/- (Rs. 1,20,000/-1000/- (Income Tax) + 50% x 3/4 x 15).

13. In addition, the Claimants are awarded a compensation of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses.

14. The overall compensation thus comes to Rs. 20,63,125/- as against an award of Rs. 10,59,812/-.

15. Consequently, the compensation stands increased by Rs. 10,03,313/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. 15% of the compensation shall be payable to each of Appellants No. 2, 3 and 4, rest 55% shall enure for the benefit of the First Appellant. 75% of the amount payable to the First Appellant shall be held in fixed deposit for a period of four years, eight years and twelve years in equal proportion, rest 25% shall be released on deposit. 75% of the amount payable to Appellants No. 3 and 4 shall be held in fixed deposit for a period of two years, rest shall be released to them on deposit. The amount payable to Appellant No. 2 shall be held in fixed deposit till she attains the age of 21 years. All the Appellants shall be entitled to payment of quarterly interest.

16. The Respondent No. 3 New India Assurance Co. Ltd. is directed to deposit the enhanced amount of Rs. 10,03,313/- along with interest with the Claims Tribunal within six weeks.

17. The Appeal (MAC. 645/2011) is allowed in above terms.

18. Pending Applications stands disposed of. A copy of the judgment be sent to the concerned Claims Tribunal for information.