(2012) 08 DEL CK 0253

In the Delhi High Court

Case No : MAC. APP. 627 of 2011

New India Assurance Co. Ltd. APPELLANT

Vs

Maya Devi and Others RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0253

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

Bench : Single Bench

Advocate : Kanwal Chaudhary, for the Appellant; S.N. Parashar, for R-1 (a) to R-1(g), for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 11,27,000/- awarded in favour of the Claimants (Respondents No.

1(a) to 1(g)) for the death of Veerpal who died in a motor vehicle accident which occurred on the intervening night of 5/6.11.2008. The finding on

negligence is not challenged by the Appellant Insurance Company.

2. The following contentions are raised:-

(i) The Claims Tribunal erred in relying on the Salary Certificate Ex. PW-1/1. Since the author/employer/his representative was not produced, the

Certificate Ex. PW-1/1 should not have been relied on to compute the loss of dependency.

(ii) The compensation of Rs. 70,000/- awarded towards loss of love and affection is on the higher side.

3. Considering the first contention raised by the Appellant, the employer was ordered to be summoned by this Court to prove Salary Certificate

Ex. PW-1/1. His statement has been recorded as CW-1. He deposed that deceased Veerpal was working as a cook at his Dhaba (M/s.

Amandeep Dhaba) since 2005. He was being paid a salary of Rs. 8,000/- per month. The witness admitted that the Dhaba is not registered with

the Sales Tax/Vat Department. He admitted that he had no documentary evidence with regard to running of Dhaba. He admitted that he is not

maintaining any record, that is, a register for payment of wages. He never obtained any receipt regarding payment of any salary to deceased

Veerpal. The witness was cross-examined on behalf of the Appellant. He could not produce any document to show that he was running any

Dhaba in the name and style of M/s. Amandeep Dhaba.

4. In the circumstances, the Respondents No. 1(a) to 1(g) failed to lead any cogent evidence with regard to deceased Veerpal''s employment as a

cook at M/s. Amandep Dhaba or his salary @ Rs. 8,000/- per month.

5. In the absence of any evidence with regard to the deceased''s income, the only option left is to award loss of dependency on minimum wages of

an unskilled worker which, at the time of accident were Rs. 3683/- per month.

6. There was no evidence with regard to the deceased''s bright future prospects. Thus the Claimants are entitled to an increase of 30% towards

inflation on the basis of judgment of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, , relied on and

discussed by this Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012.

7. The loss of dependency thus comes to Rs. 6,43,493/- (3683/- + 30% x 4/5 x 12 x 14).

8. The Claims Tribunal awarded a sum of Rs. 70,000/- towards loss of love and affection. Loss of love and affection can never be measured in

terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and

Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs.

25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs.

25,000/- only.

9. The Claimants are further awarded a sum of Rs. 10,000/- each towards loss to estate, loss of consortium and funeral expenses.

10. The overall compensation thus comes to Rs. 6,98,493/- which shall carry interest @ 12% per annum as awarded by the Claims Tribunal.

11. The amount of compensation awarded shall be released in favour of the Respondents No. 1 (1) to 1(g) in terms of the order passed by the

Claims Tribunal.

12. The excess amount of Rs. 4,28,507/- along with proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall

be refunded to the Appellant Insurance Company.

13. The statutory deposit of Rs. 25,000/-, if any, shall be refunded to the Appellant. Pending Applications stand disposed of.

