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(1991) 03 DEL CK 0010

In the Delhi High Court

Case No : First Appeal No. 257 of 1980 and Civil Miscellaneous Appeal No. 3123 of 1990

New India Assurance Co. Ltd. APPELLANT

Vs

Motor Replacement Co. and Others RESPONDENT

Date of Decision : 14-03-1991

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A

Citation : (1991) 1 ACC 657 : (1991) ACJ 928 : (1991) 44 DLT 190 : (1991) RLR 246

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : B.R. Sabharwal, Y.D. Nagar, V.P. Chaudhary and Sushma Sachdeva, for the Appellant;

Judgement

R.L. Gupta, J.

(1) The claim for compensation in this appeal was filed by the widow, three sons and a daughter of the deceased Mahesh Parsld Verma who unfortunately died in abroad accident at Alipur Road Delhi near Police station Civil Lines on 6.9.71 at about 7.15 PM. The deceased was sitting on the pillion seat of Motor Cycle DLM-7418 driven by Shiv Narain Gupta when car No. Dlk 3406 driven by Gian Singh, respondent recklessly and negligently at a fast speed struck against the Motor cycle. The deceased received numerous injuries as a result of which he died in Irwin Hospital on 10.9.71. Tribunal vide its judgment dated 19.1 80 awarded a total amount of Rs. l,03,680.00 . He allowed a sum of Rs. 19.680.00 to be given to the daughter Miss Kapila Verma as expenses likely to be incurred on her marriage. The remaining amount of Rs. 84,000.00 was apportioned as follows :-

1.Rs. 31.680.00 to the daughter Ms. Kapila Verma 2. Rs. 20,000.00 to Rakesh Verma 3. Rs. 30,000.00 to Sudhir Verma and 4. Rs. 22.000.00 to Lalit Verma, all three being sons of the deceased it may also be noted that the claim petition was earlier dismissed in default for non prosecution on 29.3.74. It was restored on 25.3.77. However, the claim petition in respect of the widow was not restored

(2) In the cross objections, there is a prayer for enhancement of the compensation from Rs. 103, 680 to Rs. 2,00,000.00 with interest at the rate of 9?/o per annum from the date of the claim petition.

(3) I have heard arguments advanced by learned counsel for the parties During the course of arguments, learned counsel for the claimant/cross objectors has restricted his arguments only on two aspects. The first grievance- is in respect of 10% deduction made by the Tribunal on account of lump sum payment and contingencies of life. The second grievance is made on account of the interest not having been allowed at least from the date when the petition was restored on 25.3.1977 and after which date the claimants took all steps to expedite the decision of the claim petition.

(4) Learned counsel for the parties have cited some authorities 0 behalf of the claimant/cross-objectors the case of Mohinder Kaur and others Manphool Singh and others decided by a Division Bench of this Court "en A in Mohinder Kaur and Others Vs. Manphool Singh and Others, has been cited. The Division Bench noticed the authority for and against the proposition regarding deduction on account of lump sum payment but ultimately it observed that the advantage of lump sum payment neutralised by rise in prices of the necessities of life. Therefore, the Division Bench held that no deduction should be made on account of Jump sum payment But in a later Division Bench case of this Court in the case of Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others, "it was held in para 34 of the judgment at page 10, that "scaling down to the extent " of only 15 per cent is permissible". Similarly the Supreme Court in the case of Madhya Pradesh State Road Transport Corpn., Bairagarh Vs. Sudhakar etc., held,

"BUT in assessing damages certain other factors have to be taken of which the High Court overlooked, such as the uncertainties of life and the fact of accelerated payment that the husband would be getting a lump sum payment which but for his wife''s death would have been available to him in driblets over a number of years. Allowance be made for the uncertainties and the total figure scaled down

(5) Therefore according to the later Division Bench decision of this Court and Hon''ble Supreme Court, deductions on account of Jump sum payment and uncertainties of life have to be made. In the present case the Tribunal made a deduction of 10% only and the same cannot be branded unreasonable J ed counsel for the claimants also drew my attention to some more cases for the proposition that no deduction on account of lump sum payment should be allowed. These are the cases of Subash Rani etc. Vs. Delhi Transport Corporation etc., . Pritam Kaur and Others Vs. Peara Singh and Others, , Prabhati Vs. Lal Chand etc., , Harbhajan Singh Bhalla (deceased) through L/Rs. Vs. Dhara Singh

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and Others, , Delhi Transport Corporation and Others Vs. Kamlesh Arora and Others, & Mrs. Elizebeth Mathew and others, Appellants Vs. Shri Yasdev and Delhi Transport Corporation, . A perusal of the aforesaid authorities shows that the attention of the learned Single Judge was not drawn to the later Division Bench authority of this Court as well as the Hon''ble Supreme Court. Therefore, in view of the later Division Bench authority and the Hon''ble Supreme Court, it has to be held that deduction on account of lump sum payment can be allowed. The Tribunal has made deduction of 10% only on this account which is not unreasonable by any standard.

(6) Coming now to the claim of interest. A perusal of the record shows that the claim petition as a whole was dismissed in default for non-prosecution on 29.3,74. It was restored vide order dated 25.3.77 in respect of the children of the deceased, but the claim petition in respect of his widow was not restored. After its restoration the claimants examined two witnesses on 26.4.78, six witness -ses on 1.9.78 and two witnesses on 6.11.78 and closed their evidence. The evidence of the respondent was closed on 15.12.1978.

(7) From the above facts, it is, Therefore, clear that the claimants did not waste any time in examining their witnesses after the restoration of the claim petition. I am, Therefore, of the view that the claimants should be held entitled ^o recover interest on the awarded amount from the date of restoration of the petition on 25.3.77 till realization. I, Therefore, allow interest in favor of the claimant/cross-objectors at the rate of 12^ per annum on the awarded amount from 25.3.77 till realization. During the course of arguments, learned counsel for the appellant submitted that the awarded amount was paid as per directions Q{ the Tribunal. If that be so, the interest will be payable only up to that date. Jag appeal and the cross objections are accordingly disposed off.

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