

(2017) 01 DEL CK 0263

In the Delhi High Court

Case No : 332 of 2009

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

NANU MAYA THAPA & ORS.

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 01 DEL CK 0263

Hon'ble Judges : Sunil Gaur

Bench : SINGLE BENCH

Advocate : Pankaj Seth, Sanjeev Srivastava

Judgement

1. Impugned Award grants compensation of Rs.29,05,144/- with interest @ 7.5% per annum to the legal heirs of Arjun Thapa, who had died in a road accident on 7th March, 2006.

2. The facts of this case are already noticed in the opening paragraphs of the impugned Award and so, needs no reproduction. On the basis of the evidence led by the parties, learned Tribunal has awarded the compensation in the following manner.

Annual Loss of Dependency

:

Rs.30,000/- +

Rs.10,000/2 = Rs.20,000/- per month

(Rs.20000 X 1/3rd) = Rs.6666/- and loss of dependency comes to Rs.13334/- (20000 - 6666). The annual loss of dependency comes to Rs.13334 X 12 = Rs.1,60,008/-.

Rs.160008 X 18 = Rs.28,80,144/- = Rs.28,80,144/-

For funeral expenses and loss of love and affection = Rs.25,000/-

Total = Rs.29,05,144/-

3. At the final hearing, learned counsel for appellant-insurer has assailed the impugned Award on the ground that benefits of revised salaries as per the Pay Commissions, which are yet to take place, has been erroneously taken into consideration by the learned Tribunal while working out average salary. It is pointed out that at the time of accident, the deceased was earning Rs.9051/- per month and at that time, 6th Pay Commission had not come into force and so, actual salary of the deceased ought to have been taken and not the average salary by taking into consideration the three Pay Commissions post the accident in question. Thus, it is submitted that the compensation granted deserves to be suitably reduced.

4. On the other hand, learned counsel for respondents-claimants submits that enhanced salary as per Pay Commissions have to be taken into consideration to work out Rs.future prospects Rs. and that learned Tribunal has failed to grant any compensation under the Head of Rs.loss of amenities of life Rs. and Rs.loss of estate Rs. and the compensation granted under the Head of Rs.loss of love and affection Rs. is wholly inadequate and so, fair compensation ought to be granted to respondents-claimants. Nothing else is urged by either side.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that deceased was a Sepoy in BSF and so, Rs.future prospects Rs. have to be taken into consideration while keeping in view the fact that at the time of his death, he was aged 28 years. It is no doubt true that the actual income of the deceased as on the date of the accident has to be the basis for grant of compensation, but addition of 50% towards Rs.future prospects Rs. has to be made in view of Supreme Courts Rs. decision in Rajesh & Ors. v. Rajbir Singh & Ors., 2013 (6) SCALE 563. Thus, applying the parameters as laid down in Rajesh (supra) to the facts of the instant case, the impugned Award is modified as under: -

Rs.A Rs.

Annual Loss of Dependency : -

Monthly Salary = Rs.9,051/-

Salary after adding 50% towards future prospects = Rs. 13,576.50/- per month

So, Annual Salary (Rs.13,576.5/- X 12) = Rs.1,62,918/- (rounded off to Rs.1,63,000/-)

Annual Salary after deducting 1/3rd towards personal expenses = Rs.1,08,667/-

Annual Loss of Dependency assessed by applying the multiplier of 17 (Rs.1,08,667/- X 17) = Rs.18,47,339/- rounded off to Rs.18,47,500/-)

6. It is no longer res integra that the courts are under a legal obligation to grant just and fair compensation without strictly applying the rules of evidence as

applicable to civil cases. It is so said because Supreme Court in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 has reiterated that the enactment of the Motor Vehicle Act, 1988 is a social legislation and indisputably beneficent to the claimant.

7. In the instant case, learned Tribunal has erred in clubbing the compensation payable for Rs.loss of estate Rs. and Rs.loss of amenities of life Rs. under single head of Rs.loss of love and affection Rs.. Compensation under other heads is assessed as under:-

Rs.B Rs.

Loss of Love and Affection = Rs.1,00,000/-

Loss of Consortium = Rs.1,00,000/-

Loss of Estate = Rs. 50,000/-

For funeral expenses = Rs. 25,000/-

Total (A+B) = Rs.21,22,500/-

8. The rate of interest @ 7.5% granted by learned Tribunal is wholly inadequate and is accordingly enhanced to 9% per annum. Consequently, the differential interest component on the amount i.e. Rs.21,12,205/- already deposited by appellant shall be payable by appellant within four weeks. Further, as per modified Award the balance compensation amount i.e. Rs.10,295/- (as per modified Award) is rounded off to Rs.10,300/- alongwith interest @ 9% per annum from the date of filing of the suit, till realization, shall be deposited by appellant with UCO Bank in A/c Nanu Maya Thapa, Delhi High Court Branch, within four weeks from today, which shall be released to respondents-claimants in the same ratio and manner as indicated in the impugned Award.

9. With aforesaid directions, the impugned Award of 11th December, 2008 stands modified.

10. The appeal and the pending applications are accordingly disposed of.

11. Dasti.