(2007) 01 DEL CK 0214

In the Delhi High Court

Case No : F.A.O. No''s. 59 and 42 of 1987

New India Assurance Co. Ltd. APPELLANT

Vs

Neeta Malhotra and Others RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Citation : (2007) 2 ACC 541 : (2007) ACJ 1435

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—F.A.O. No. 59 of 1987 is dismissed in default as none has appeared for the appellant at the hearing today.

2. Even otherwise, I note that on various dates F.A.O. No. 59 of 1987 was listed in the years 2002, 2003, 2004 and 2005. On no date, counsel appeared for the appellant.

3. I may also note that grievance of the insurance company in the appeal is to that part of the award whereunder, learned Tribunal has held that the insurance company has failed to prove that its liability was limited to Rs. 50,000.

4. Since connected appeal by claimants is also being decided, I have perused the record of the learned trial Judge. I have perused testimony of M.S. Jagga, R3W1, posted as an Inspector in the Ferozpur office of New India Assurance Co. Ltd., the branch where the offending vehicle was got insured. In cross-examination, he has admitted, (quote):

It is, however, correct that policy in question was a comprehensive commercial vehicle policy.

5. He has further admitted that the carbon copy of the policy kept in the record of the insurance company was different from the original policy which was issued. To quote from his testimony, he admitted:

This portion marked ''A'' to ''B'' in this paper is not there in the original. This portion is only meant for office use. The portion and circles marked ''X'' at the bottom of this paper, Exh. R3W1/C, is also not in the original of the policy.

6. Learned Tribunal has taken note of this testimony and has opined that since the insurance company did not prove that the premium received was only Rs. 100, being premium chargeable as per notified tariff for a policy limited to Rs. 50,000, adverse inference had to be drawn.

7. Prima facie, findings of the learned Tribunal are correct. More so, when R3W1 categorically admitted that the policy in question was a comprehensive policy.

8. Pertaining to the compensation awarded, relevant facts are that Prakash Chand, aged 38 years and employed as a Naval Officer with Interseas, a private shipping line, died as a result of a motor accident which took place on 4.2.1979. He was survived by his widow Neeta Malhotra, two children, both daughters, namely, Neena and Preeti and his mother, Chand Rani.

9. On the issue of compensation to be paid, the learned Tribunal has ignored the documentary evidence which was led to show the income of the deceased for the reason that wife of the deceased stated that her husband was sending to her, for maintenance of the family, Rs. 3,000 per month.

10. Learned Tribunal has also relied upon the testimony of the wife wherein she stated that 70 per cent salary of the deceased was being sent by him to her.

11. Multiplier adopted is 11. Therefore, loss of dependency has been determined as Rs. 3,000 x 12 x 11 = Rs. 3,96,000.

12. Documents marked 8 to 18 pertain to the wages of the deceased between 1.7.1976 and February 1978.

13. Since the deceased was working as a Radio Operator on a ship, wages are in US$.

14. Depending upon the number of working days and the number of days he spent on the ship, wages vary from US $ 767 per month to US $ 1,777 per month.

15. Keeping in view the dollar-rupee rate for the years in question, I do not agree with the submission made by the learned Counsel for the appellant that Tribunal has erred in ignoring documentary evidence.

16. The wife has obviously spoken truthfully when she stated that her husband was sending to her, for household expenses, Rs. 3,000 per month.

17. But I do agree with the submissions that future prospects have not been considered.

18. By future prospects, I may not mean increase in wages as is normally understood. What I mean to convey is neutralisation of inflation by means of

increased wages granted by employers.

19. It is a hard reality, that to neutralise the increase in cost of living, allowances like dearness allowance, inflation linked allowance, etc., have been paid over the years.

20. As the multiplier adopted is 11, which I propose to adopt in view of the fact that the deceased was aged 38 years, it would be safe to assume that by the time he would have left employment, wages would have doubled.

21. The mean average wage, Therefore, is taken into consideration by me.

22. Since learned Tribunal has accepted that Rs. 3,000 per month was 70 per cent of the income of deceased, I would treat 70 per cent monthly contribution to the family as a mean of Rs. 3,000 + Rs. 6,000. Thus, same comes to Rs. 4,500 per month.

23. Loss of dependency, Therefore, work out to Rs. 4,500 x 12 x 11 = Rs. 5,94,000.

24. I note that Tribunal has not awarded any compensation to the wife for loss of consortium or to the children for loss of love and affection of their father. Even funeral expenses have not been granted.

25. Granting Rs. 2,000 for funeral expenses and conventional sum of Rs. 15,000 for loss of consortium to the wife and loss of love and affection to the children, total compensation payable comes to Rs. 5,94,000 + Rs. 2,000 + Rs. 15,000 = Rs. 6,11,000.

26. For unexplainable reasons, learned Tribunal has not awarded interest from the date of claim petition till date of award.

27. While granting relief, learned Tribunal has directed interest to be paid at the rate of 9 per cent per annum from the date of award till realisation.

28. No reasons have been assigned for not granting pendente lite interest.

29. The award requires modification on said count as well.

30. F.A.O. No. 42 of 1987 accordingly stands disposed of enhancing the compensation awarded from Rs. 3,96,000 to Rs. 6,11,000.

31. The award is further modified, in that, on the sum awarded under the award, i.e., Rs. 3,96,000, interest is granted at 9 per cent per annum from the date of claim petition till date of payment of the said sum.

32. Pertaining to the enhanced compensation, same shall be paid with interest at the rate of 6 per cent per annum w.e.f. the date of claim petition till the date of realisation.

33. Since the mother of the deceased, Chand Rani, is not an appellant and has died, enhanced compensation as also the interest on the compensation awarded

by the Claims Tribunal including interest on the enhanced compensation shall be paid equally to the appellants.

34. No amount would be kept in a fixed deposit for the reason, nearly 27 years have gone by since the deceased died. No costs.

