(2012) 01 DEL CK 0380

In the Delhi High Court

Case No : Mac. App. 285 of 2010 with Mac. App. 104 of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Paramjeet Kaur and Others
 Paramjeet Kaur and Others Vs New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Citation : (2012) 187 DLT 282

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

Bench : Single Bench

Advocate : Kanwal Chaudhary in Mac. app. 285/2010 and Mr. Anshuman Bal,s No. 1 to 5 in Mac. app. 104/2012, for the Appellant; Anshuman Bal, Advocate for Respondents No. 1 to 5 in Mac. App. 285/2010 and Mr. Kanwal Chaudhary, Advocate in Mac. App. 104/2012, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These are two Cross-Appeals. In MAC APP No. 285/2010, the Appellant New India Assurance Company Ltd.(hereinafter referred to "the insurer") seeks reduction of the compensation of Rs. 18,82,000/- awarded for the death of Balwant Singh who succumbed to his injuries on 17.09.2007 suffered in a motor accident which took place on 10.08.2007.

2. In the Cross-Appeal being MAC APP No 102/2012, the Appellants who are Respondents No. 1 to 5 in MAC APP No. 285/2010 seek enhancement of compensation on the ground that the deceased''s full salary was not taken into consideration while computing the loss of dependency.

3. The contentions raised on behalf of the Appellants are:

(i) The deceased was aged 55 years; no future prospects were, therefore, permissible. The Tribunal erred in awarding 30% increase in the salary.

(ii) A sum of Rs. 1 lakh was awarded towards loss of love and affection, which was on the higher side. The deceased''s income should have been considered as Rs. 13,953/- per month instead of Rs. 15,345/- taken by the Tribunal.

4. By the impugned judgment, the Tribunal took the deceased''s salary to be Rs. 15,315, added 30% towards future prospects, deducted 1/3rd towards the personal and living expenses and computed the loss of dependency as Rs. 17,52,036/-.

5. On account of 6th Pay Commission, the salaries of Government employees were increased retrospectively w.e.f. 01.01.2006. The deceased died on 17.09.2007. His salary certificate, after fixation of his salary as revised by the 6th Pay Commission, was placed on record during inquiry before the Tribunal. The deceased''s salary as on 17.09.2007 inclusive of all allowances was Rs. 19,409/-. This also included transport allowance of Rs. 100/-, Metro Pass Allowance of Rs. 90 and Conveyance Allowance of Rs. 150.

6. It is well settled that for determination of loss of dependency, the entire salary paid to the deceased by his employer by way of perks should be included in the monthly income. (National Insurance Co. Ltd. V. Indira Srivastava, 1 (2008) ACC 162 (SC) and National Insurance Company Ltd. Vs. Smt. Saroj and Others,). Out of the entire salary, only a sum of Rs. 100/- which was transport allowance, Metro Pass Allowance Rs. 90/- and Conveyance Allowance Rs. 150/- could be taken as perks incidental to employment and are personal to the deceased. Thus, the loss of dependency was to be computed on the salary of Rs. 19,409/- - 100 - 150 - 90 = Rs. 19,069/-.

7. The deceased was aged 55 years. The Tribunal erred in granting 30% increase towards future prospects. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , this was permissible only when the deceased was between the age of 40 years to 50 years.

8. The compensation of Rs. 1 lakh awarded towards loss of love and affection was on the higher side. I may mention that where the Claimants are awarded the loss of dependency on actual basis, normally a nominal sum is awarded under the head of 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.

9. The compensation awarded in view of the above observations is recomputed as under:-

i)

Loss of Dependency 19069 X 12 - 20766 (Income Tax) - 1/3rd (69354) X 11

Rs. 15,25,788/

ii)

Loss of Love and Affection

Rs. 25,000/-

iii)

Loss of Estate

Rs. 10,000/-

iv)

Funeral Expenses

Rs. 10,000/-

v)

Loss of consortium

Rs. 10,000/-

Total

Rs. 15,80,788/-

10. The compensation stands reduced from Rs. 18,82,000/- to Rs. 15,80,788/-, with interest @ 7.5% per annum from the date of filing of the petition till the date of deposit.

11. 40% of the compensation amount shall be payable to Smt. Paramjeet Kaur, the deceased''s widow; 25% shall be payable to Smt. Dalip Kaur, the deceased''s mother; 5% shall be payable to Smt. Baljeet Kaur, the deceased''s married daughter and rest 15% each shall be payable to Hardeep Singh and Tejinder Singh respectively.

12. The amount payable to Smt. Paramjeet Kaur shall be held in Fixed Deposit for a period of five years. The amount payable to Hardeep Singh and Tejinder Singh shall be held in a Fixed Deposit in UCO Bank, Delhi High Court Branch, New Delhi for a period of four years. They shall be entitled to apply to the Tribunal for premature encashment of FDR, in case the money is needed for their higher education. The Claimants would be entitled to payment of interest on quarterly basis.

13. The excess amount along with interest earned, if any, during the pendency of the Appeal shall be refunded to the Appellant New India Assurance Company Ltd. The amount payable shall be proportionately disbursed/ held in fixed deposit in terms of the Tribunal''s order in favor of the claimants.

14. MAC. APP. No. 285/2010 is allowed in above terms.

15. MAC. APP. No. 104/2012 is dismissed.

