
(2014) 12 DEL CK 0174

In the Delhi High Court

Case No : Mac. App. 1097/2014 and CM No. 19914/2014

New India Assurance Co. Ltd.

APPELLANT

Vs

Radha Nigam

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2014) 12 DEL CK 0174

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Mridul Jain, Advocate for the Appellant

Judgement

Jayant Nath, J.

CM No. 19915/2014 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

MAC.APP. 1097/2014 & CM No. 19914/2014 (stay)

1. By the present appeal the appellant seeks to impugn the award dated 09.09.2014. The brief facts giving rise to the claim petition are that on 14.03.2003 Shri Manish Nigam (deceased) along with his friends Shri Anish Jain, Shri Ansul Khandelwal and Shri Chhayan Gupta were travelling in Baleno car bearing no. DL-9CB-1071 which was being driven by Shri Manas Bansal in a rash and negligent manner. At about 11.55 PM the car reached Prithvi Raj Road. It collided with an ambassador car bearing no. DL-7CC-5301 as a result of which Shri Manish Nigam, Shri Anish Jain and Shri Anshul Khandelwal died and Shri Chhayan Gupta sustained grievous injuries. Injured were taken to Dr. RML Hospital.

2. This claim petition pertains to the deceased Shri Manish Nigam. Regarding other claim petitions which are filed by the occupants I have already dealt with

the judgment in MAC Appeal No. 646/2011 dated 02.12.2014.

3. In the present appeal, the appellant seeks to enhance the quantum of compensation awarded by the Tribunal. Based on the evidence on record a total compensation of Rs.16,50,000/- was given by the Tribunal, the details thereof are as follows:-

4. A perusal of the award shows that the Tribunal noted that the deceased Shri Manish Nigam was 18 years old. He was Studying Bachelors in Business Administration (BBA) at University of Wales College, New Port (UK) . He had done his schooling from Modern School, Barakhamba Road, New Delhi. The deceased after passing of 12th standard was pursuing BBA course. The Tribunal noted that the minimum wages of a graduate w.e.f. 01.02.2013 were Rs.3543.90/- per month and took a potential income of the deceased as Rs.10,000/- per month. Thereafter it enhanced the sum by 50% , deducted half towards personal expenses and taking the multiplier of 18 based on the age of the deceased calculated the total loss of dependency be as $\text{Rs.}7500 \times 12 \times 18 = \text{Rs.}16,20,000/-$.

5. Learned counsel appearing for the appellant seeks to impugn the computation of the loss of dependency. He submits that the Tribunal has erroneously taken the income of the deceased as Rs.10,000/- whereas it is clearly recorded that no proof is placed on record to show the income of the deceased. He further submits that after having assessed the income of the deceased as Rs.10,000/- the Tribunal has wrongly enhanced it by awarding 50% addition towards future prospects. It is lastly submitted that the multiplier has been wrongly used inasmuch as the multiplier of 18 has used based on the age of the deceased whereas the Tribunal was obliged to fix the multiplier based on the age of the parents of the deceased.

6. As far as the proof of income of the deceased is concerned, the educational qualification of the deceased indicates that the Tribunal has fixed the potential income at Rs.10,000/- per month. The deceased has done his schooling from one of the noted schools of Delhi. He was doing his BBA from University of Wales College, New Port (UK) . He had a potential of earning much more than Rs.10,000/- per month. In the case of V. Mekala Vs. M. Malathi and Another, , the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years took the notional income of Rs.10,000/- per month. Reference may also be had to the judgment of the Supreme Court in the case of Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma, which was a case of a medical student aged 19 years. The Supreme Court took the notional income of Rs.25,000/-.

7. In view of the above legal position, there is no reason to disagree with the findings on the issue of potential income by the Tribunal.

8. As far as future prospect is concerned, this Court in MAC APP 646/2011 arising out of the same accident has already rejected the contention of learned counsel

for the appellant.

9. As far as selection of multiplier by the Tribunal is concerned, it is on record that the deceased was a bachelor of 18 years old. Reference may be had to the judgment of this Court in the case of Mohd. Hasnain and Others Vs. Jagram Meena and Others, where it was held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

10. This Court in the said case of Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra) relied on the judgments of the Supreme Court in case of M. Mansoor vs. United India Insurance Co. Ltd., which judgment further relying on the judgment of the Supreme Court in the case Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, held as follows:-

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation."

11. M. Mansoor vs. United India Insurance Co. Ltd (supra) was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. (supra) the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17. In view of the said judgment passed by this Court, following the judgments of the Supreme Court, the Tribunal erred in not taking the age of the deceased to consider the appropriate multiplier.

12. I may further note that in MAC APP.761/2012 Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors. vide judgment dated 02.04.2014 where the deceased was 24 years the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased as he was a bachelor. This court relying upon the judgment in the case of Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra) applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No. 5612/2014 was dismissed by the Supreme Court on 10.10.2014.

13. In the light of the above, there is no merit in the present appeal, the appeal is dismissed. In case any statutory amount was deposited by the appellant at the time of filing of the appeal, the same may be refunded to the appellant. All interim orders stand vacated. The appellant may comply with the award within four weeks from today.