(2012) 04 DEL CK 0442

In the Delhi High Court

Case No : MAC. APP. 268 of 2011

New India Assurance Co. Ltd. APPELLANT

Vs

Reshma khatoon and Others RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0442

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

Bench : Single Bench

Advocate : K.K. Bhat, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 20,03,000/- awarded for the death of the deceased Yunus Khan who was working as a spray painter and was aged 24 years at the time of accident on 02.09.2003. The Claims Tribunal accepted the deceased''s income to be Rs. 91,240/-(after deducting Rs. 1,236/- paid towards Income Tax), added 50% towards future prospects to compute the loss of dependency as Rs. 18,48,000/-. Apart from the notional sums for funeral expenses, loss of consortium, loss to estate; a compensation of Rs. 1,25,000/- was awarded towards the loss of love and affection.

2. The contentions raised on behalf of the Appellant Insurance Company are:

i) The deceased was a self employed person, addition of 50% was not permissible as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

ii) The compensation of Rs. 1,25,000/- awarded for the loss of love and affection is exorbitant and excessive.

3. While dealing with the loss of dependency, the Claims Tribunal held as under:

50. PW-4 Smt. Reshma Khatoon during the course of her deposition filed by way of affidavit Ex.PW-4/1 stated that her husband was 24 years of age and was self employed as Proprietor of M/s. Khan Spray Painter. She deposed that her husband was earning a sum of Rs. 15,000/- per month and had left behind herself and her two minor daughters besides his old and feeble parents.

51. Counsel for the petitioner submitted that had (the) petitioner not met with the accident, then in the near future, he would have started earning much more than what he was earning at the time of his death.

52. PW-4 Reshma Khatoon, wife of deceased Yunus Khan during the course of her deposition had stated that her husband was filing income tax return. She proved on record, copy of the Income Tax Return for the assessment years 2001-2002, 2002-2003 and 2003-2004 filed by her husband with the department as Ex.PW-4/A1 to PW-4/A3.

53. Hon''ble Apex Court in "Smt. Sarla Verma V/s DTC & Another" bearing civil appeal no.3183/2008, decided on 15th April 2009, has held that for the purpose of calculation of loss of dependency, actual income of deceased is required to be calculated i.e. income which deceased was getting minus the tax liability and also the deductible allowances.

54. Perusal of Income Tax Return for the assessment year 2003-2004 Ex.PW-4/A3 reveals that deceased Yunus Khan was earning a sum of Rs. 92,476/- per annum. Out of this amount of Rs. 92,476/- a sum of Rs. 1236/- is deducted towards income tax. In view thereof, annual income of deceased Yunus Khan comes to Rs. 92,476 - Rs. 1,236 = Rs. 91,240/-.

55. It is submitted y Counsel for the petitioner that deceased Yunus Khan was only 24 years of age at the time of accident. He submitted that had he not died in the accident, then he would have gone on to earn much more than what he was earning at the time of accident.

56. Counsel for the Insurance Company Sh. Manoj Rai contended that there is no cogent and consistent evidence on record with respect to future prospects, therefore, the same be not taken into consideration.

57. I have given my thoughtful consideration to the rival contentions and have perused the material placed on record.

58. PW-4 Reshma Khatoon has placed on record Income Tax returns Ex.PW-4/A1 to PW-4/A3 with respect to income of her husband. She has filed income tax returns for the assessment years 2000-01, 2001-02 and 2002-03. It is apparent on perusal of income tax return of all these three assessment years filed by the deceased that in the first assessment year his annual income was Rs. 60,156/-. In the next assessment year his annual income was Rs. 64,532/- and in the subsequent assessment year his annual income increased to a sum of Rs. 92,476/-.

59. Considering the rise in the annual income of deceased in these three years, I am of the considered opinion that deceased was doing well in his business and his income was growing on yearly basis. In view thereof, I have no reason for not taking into account "future prospects".

60. Having regards to the fact that deceased was only 24 years of age at the time of his death. I am of the considered opinion that uniform criterion towards future prospects as per law laid down by Hon''ble Apex Court in Smt. Sarla Verma''s Case (Supra), is required to be applied in the present case as well.

61. Consequently, 50% of the earning which deceased was having at the time of his death is required to be added to his last annual income towards "future prospects" for the purposes of calculation of "loss of dependency"

4. The learned counsel for the Appellant urges that since the deceased was a self employed person, no addition was required to be made while computing the loss of dependency in view of the Sarla Verma(supra). It is true that in Sarla Verma(supra), it was held that no addition towards future prospects should be usually made in the case of the deceased who was having a fixed income or was a self employed person. In this case, there was specific evidence as to the consistent increase in the deceased''s income from Rs. 60,156/- in the Assessment Year 2000-01 to Rs. 92,476/- in the Assessment Year 2002-03. The accident took place on 02.09.2003. Of course, the last return was filed only on 02.09.2003, but there was nothing on the record to prove that the Income Tax Return was ante-dated. The Claims Tribunal rightly believed the Income Tax Return and granted future prospects. I am, therefore, not inclined to interfere with the award towards loss of dependency.

5. As far as the award of Rs. 1,25,000/- towards loss of love and affection is concerned, the 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 Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

6. No other contention has been raised. The overall compensation is reduced from Rs. 20,03,000/- to Rs. 19,03,000/-

7. The compensation of Rs. 9,53,000/- awarded to the First Respondent shall be reduced by Rs. 1,00,000/-. Rest of the apportionment shall remain unchanged. The compensation awarded shall be disbursed/held in Fixed Deposit in UCO Bank, Delhi High Court Branch in terms of the impugned award.

8. The excess amount of Rs. 1,00,000/- along with proportionate interest and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

9. The Appeal is allowed in above terms. The statutory amount shall be refunded to the Appellant Insurance Company.

