(2014) 07 DEL CK 0366

In the Delhi High Court

Case No : M.A.C. App. 549 of 2014

New India Assurance Co. Ltd. APPELLANT

Vs

Shweta and Others RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2015) 2 ACC 871

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : J.P.N. Shahi, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM No. 10419/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

MAC. APP. 549/2014

1. Vide the present appeal, the appellant/Insurance Company has assailed the impugned award dated 10.5.2014, whereby the learned Tribunal has awarded compensation for a sum of Rs. 17,94,000 with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount. Mr. Shahi, learned Counsel appearing on behalf of the appellant/Insurance Company submits that the deceased was driving the vehicle himself when he met with the accident with offending vehicle. Despite, the learned Tribunal failed to assess the contributory negligence on the part of the deceased.

2. Learned Counsel has fairly conceded that the appellant/Insurance Company did not led any evidence to prove that the deceased was negligent in causing the

accident in any manner.

3. In view of the statement made by the learned Counsel for the appellant/ Insurance Company, I find no merit on this issue.

4. Learned Counsel further argued that age of the deceased was 26 years on the date of the accident, i.e., 25.10.2007 Though the claimants could not prove that the deceased was in permanent employment, despite the learned Tribunal has added 50% of the income of the deceased in his actual income towards future prospects, which is contrary to the settled law in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which has been further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, =delivered in Civil Appeal No. 4646 of 2009 on 2.4.2013.

5. So far as the issue of future prospects is concerned, the same has been dealt with by this Court in the case bearing MAC. APP. No. 846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh and Others, , wherein held as under:

"22. The Apex Court in Rajesh has discussed the issue regarding the assessment of future prospects; and has also come to a specific conclusion that the self-employed or persons with fixed wages are entitled for future prospects. The Apex Court succinctly specified the reasons for the same considering the socio-economic changes in the society. It also made thrust on the age of the deceased as one of the factors for computing the future prospects.

23. I note, the Apex Court in Santosh Devi noted the finding in Sarla Verma; and canvassed a different reasoning regarding the assessment of future prospects: one of the factors in the multiplicand.

24. The Apex Court in Santosh Devi, did not refer the matter to a Larger Bench, whereas it followed all the principles formulated in Sarla Verma except the finding in respect of the assessment of future prospects for the persons falling under the category of self-employment/fixed wages.

25. It is legally significant to note the dictum laid down by the Constitution Bench of Apex Court in Central Board of Dawoodi Bohra Community and Anr. (supra). The Apex Court held as under:

''12. Having carefully considered the submissions made by the learned senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the above said decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser

quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law* the correctness of which is doubted.''

26. While considering the case of Santosh Devi, the Apex Court did not feel to refer the matter to a Larger Bench. Therefore, it can be concluded that there is no contradictions in the finding of Sarla Verma and Santosh Devi, in turn the Apex Court extended the scope and ambit of Sarla Verma through Santosh Devi.

27. In view of above, this Court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon''ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self-employment/fixed wages this Court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh."

6. Therefore, keeping in mind the view taken by this Court in the case of Angrej Singh & Ors. (supra), while relying upon the dictum of the Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, and the age of the deceased, i.e., 26 years at the time of accident, I do not find any merit in the submissions of the learned Counsel on the issue of adding 50% future prospects in the actual income of the deceased.

7. Admittedly, the deceased was 26 years of age at the time of the accident. He was earning Rs. 98,468 per annum, which has been proved by the Income Tax Return (''ITR'') for the assessment year 2005-06, Ex. PW3/2 (colly.).

8. Shri Devender Kumar, Inspector, Income Tax Office, Ward No. 2(3), near Shankar Chowk, Gurgaon, Haryana, appeared as PW3 and proved the ITR filed by the deceased for the assessment year 2005-06 as Ex. PW3/2. He specifically stated that as per the computer record, deceased Shri Sanjeev Raghav had not filed ITRs for the assessment year 2006-07 onwards.

9. The accident had taken place on 25.10.2007. The ITR available on record was for the assessment year 2005-06, which had been proved by PW3. The same shows annual income of the deceased to be Rs. 98,468 on which an income tax of Rs. 8,694 was payable. Since rebate was admissible in respect of the same, therefore, the learned Tribunal has assessed the annual income of the deceased as Rs. 98,468.

10. Learned Counsel for the appellant/Insurance Company has raised the issue that ITR of one year cannot be considered for assessing the income of the deceased.

11. I do not find any merit in to submission made by learned Counsel for the reason that the accident had taken place on 25.10.2007. Obviously there was no ITR thereafter. Before that, ITR pertaining to the assessment year 2005-06, Ex. PW3/2 is on record. Moreover, on the issue of any other ITR being filed by the deceased for the previous years, the Insurance Company failed to ask any witness to produce the same.

12. In such an eventuality, there was no embargo upon the learned Tribunal to assess the income of the deceased as per the record available.

13. As learned Counsel has argued that the compensation granted by the learned Tribunal towards non-pecuniary damages is on higher side.

14. I note, the deceased was aged 26 years on the date of the accident. He was maintaining the family consisting of a young widow, a minor son and an aged mother. Due to his sudden accidental death, his young widow lost the association of her husband and enjoyment of life, minor son lost the love, affection, care and guidance of his father and mother lost the love, affection and support of her young son in her old age.

15. Therefore, keeping in view the facts and circumstances of the case, I am not inclined to interfere with the compensation amount granted by the learned Tribunal towards non-pecuniary damages.

16. Hence, finding no merits in the appeal, the same is dismissed in limine. Consequently, the Registry of this Court is directed to release the statutory amount in favor of the appellant/Insurance Company and the compensation with up-to-date interest in favor of the respondents/claimants in terms of the award dated 9.5.2014 passed by the learned Tribunal on taking necessary steps by them.

CM. No. 10418/2014 (for stay)

With the dismissal of the appeal itself, the instant application has become infructuous. The same is accordingly dismissed.

