(2012) 12 DEL CK 0155

In the Delhi High Court

Case No : MAC. APP. 971 of 2012

New India Assurance Company Ltd. APPELLANT

Vs

Girdhari Lal and Others RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0155

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

Bench : Single Bench

Advocate : Soumik Mazumdar, for the Appellant; K.K. Dubey, Advocate for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Insurance Company challenges the quantum of compensation of Rs.14,80,528/- awarded by the Motor

Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 and 2 for the death of Smt. Prabha, who died in a motor vehicle

accident which occurred on 05.03.2011. The finding on negligence is not challenged by the Appellant Insurance Company. Thus, the same has

attained finality.

2. During the inquiry before the Claims Tribunal, it was claimed that deceased Smt. Prabha was a housewife and also self employed earning

Rs.8,000/- per month.

3. On appreciation of evidence, the Claims Tribunal found that the deceased was aged 52 years. It further held that in the absence of any evidence

with regard to the deceased Smt. Prabha''s employment, the legal representatives are to be awarded compensation for loss of gratuitous services rendered by a housewife on the principles laid down in Royal Sundaram Alliance Insurance Co Ltd. v. Master Manmeet Singh & Ors., 2012 ACJ

721. It, thus, made an addition of 25% in the wages of a non-matriculate and applied the multiplier of 11 on taking the age of the deceased as 52

years.

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

i) Since the deceased was aged 52 years, addition of 25% was not permissible in view of the judgment in Master Manmeet (supra), relied upon by

the Claims Tribunal.

ii) The compensation awarded towards non-pecuniary damages is on the higher side.

5. On the other hand, the learned counsel for Respondents No. 1 and 2 (Claimants) urges that as per voter identity card issued by the Election

Commission of India, the deceased''s age as on 01.01.2008 was 44 years. Thus, on the date of the accident, she was aged 46 years. The Claims

Tribunal erred in taking the deceased''s age as 52 years.

6. Learned counsel for the Respondents (Claimants) concedes that the compensation is to be awarded in accordance with the principle laid down

in Master Manmeet (supra).

7. Learned counsel for the Respondents (Claimants) has placed on record a photocopy of the voter identity card which was proved as Ex. PW-

2/2 before the Claims Tribunal. It is established that the age of deceased Smt. Prabha was 44 years on 01.01.2008. The age in post mortem

examination is given only by approximation. In the circumstances, the age as appearing in voter identity card should have been preferred to the age

as mentioned in the post mortem report. Thus, I hold that on the date of death the deceased was aged about 47 years.

8. On the principle as laid down in Master Manmeet (supra) while awarding compensation in case of a housewife there has to be an addition of

15% when she is aged between 40 years to 50 years. The multiplier at the age of the deceased would be 13 as against 11 adopted by the Claims

Tribunal.

9. The loss of dependency on account of the loss of gratuitous service, therefore, comes to Rs.12,08,079/- (6734/- + 15% x 12 x 13).

10. The Respondents (Claimants) are further entitled to a compensation of Rs.25,000/- towards loss of love and affection and Rs.10,000/- each

towards loss of consortium and funeral expenses.

11. The overall compensation thus comes to Rs.12,53,079/-.

12. The Claims Tribunal awarded interest @ 9% per annum. In an accident which occurred on 05.03.2011, the interest is just and reasonable.

13. In view of the above discussion, the compensation stands reduced from Rs.14,80528/- to Rs.12,53,079/-.

14. The excess compensation of Rs.2,27,449/- along with proportionate interest and the interest, if any, accrued during the pendency of the

Appeal shall be refunded to the Appellant Insurance Company.

15. The amount of compensation awarded to the Respondents (Claimants) shall be disbursed/held in fixed deposit in terms of the order passed by

the Claims Tribunal.

16. In view of the above discussion, the Appeal has to succeed. The same is accordingly allowed.

17. The statutory deposit of Rs.25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.