(2015) 08 DEL CK 0317

In the Delhi High Court

Case No : MAC App. 472/2008

New India Assurance Company Ltd. APPELLANT

Vs

Shakuntala Devi and Others RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2015) 8 AD 405

Hon'ble Judges : Pratibha Rani, J.

Bench : Single Bench

Advocate : Shoumik Mazumdar, Advocate for Pankaj Seth, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Pratibha Rani, J.

CM No. 12147/2008 (condonation of delay)

1. For the reasons stated in the application, the delay of 105 days in filing the appeal is condoned. Application stands disposed of.

MAC. APP. No. 472/2008

2. The appellant i.e. New India Assurance Company Ltd. has challenged the award dated 29.01.2008 passed by the learned Presiding Officer, MACT mainly on the following grounds:-

(i) Income of the deceased as Rs. 7000/- per month has been wrongly assessed by the Tribunal.

(ii) The Tribunal has erroneously deducted one-fourth of the assessed income of the deceased towards his personal expenses, however the deduction towards personal expenses should have been one-third of the assessed income.

(iii) In view of the age of the deceased i.e. 40 years, the Tribunal has wrongly applied the multiplier of ''15'' while calculating the compensation.

3. Briefly stating that facts of the case are that on 03.11.1999 at about 8.30 pm Sh. Shaym Singh was returning home from NOIDA on his Scooter No. DAM 9353. When he reached near Road No. 13 opposite SFS Flats, Jasola, his scooter was hit by truck bearing registration No. HR 38D 4196. Due to the impact, Shyam Singh fell down on the road alongwith his scooter and in the meanwhile, another truck bearing registration No. HR 47 4086 came from behind and overrun him. Sh. Shyam Singh succumbed to his injuries on the next day i.e. on 04.11.1999.

4. The truck bearing registration No. HR 38D 4196 was insured with Oriental Insurance Company Ltd. (respondent No. 10 herein) and truck bearing registration No. HR 47 4086 was Insured with New India Assurance Company Ltd. (appellant herein)

5. A claim petition under Section 173 of The Motor Vehicles Act, 1988 was filed by the petitioner No. 1 Smt. Shakuntala Devi wife, petitioner No. 2 Smt. Maya Devi mother and petitioners No. 3 to 7 namely Neeta, Balender, Jasyender, Bharti and Deepay sons & daughters of deceased Shyam Singh seeking compensation for his death in the accident caused by offending vehicles i.e. truck bearing registration No. HR 38D 4196 and truck bearing registration No. HR 47 4086.

6. Vide impugned award dated 29.01.2008, a compensation of Rs. 10,05,000/- (inclusive of interim award of Rs. 50,000/- passed on 18.03.2002) alongwith simple interest @ 9% per annum from the date of filing the petition has been awarded to the legal heirs of deceased Shyam Singh and liability was fastened on the owners of both the offending vehicles i.e. truck bearing registration No. HR 38D 4196 and truck bearing registration No. HR 47 4086, involved in the accident and their respective insurance companies.

7. It may be noted here that Oriental Insurance Company Ltd. (respondent No. 10 herein) with which one of the offending vehicles i.e. truck bearing registration No. HR 38D 4196 was insured, had also challenged the award dated 29.01.2008 by filing MAC. APP. No. 461/2008. The Oriental Insurance Company Ltd. i.e. appellant in MAC. APP No. 461/2008 did not challenge the award either on the aspect of income of the deceased Shyam Singh or on the aspect of application of wrong multiplier or deduction towards personal expenses. The limited challenge in MAC. APP. No. 461/2008 was to seek recovery rights on the basis of fake driving licence being held by the driver of truck bearing registration No. HR 38D 4196. It may be added here that said MAC. APP. No. 461/2008 preferred by the Oriental Insurance Company Ltd. stands dismissed by this Court vide order dated 04.08.2015.

8. I have heard learned counsel for the appellant and carefully gone through the record.

9. During the course of hearing today learned counsel appearing on behalf of the appellant was asked to explain as to how with a family of seven persons

dependent on the deceased, deduction could be only one-third towards personal expenses. Further attention of learned counsel for the appellant was drawn to the fact that when the deceased was aged about 40 years at the time of his death how the multiplier of ''15'', could be challenged by the insurance company. Attention of learned counsel for the appellant was also drawn to the Schedule II wherein the multiplier to be applied for age of the victim ''above 35 years but not exceeding 40 years'' is ''16'' and ''above 40 years but not exceeding 45 years'' is ''15''.

10. The Hon''ble Supreme Court reviewed the law with regard to the selection of multiplier and consideration of the future prospects and held that uniformity has to be achieved in payment of the compensation. The Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, laid down the following principles for grant of compensation in death cases:-

11. On being confronted with the above legal position, Sh. Shoumikh Mazumdar, Advocate appearing on behalf of appellant-insurance company conceded that infact on these two counts, deduction should have been one-fifth towards personal expenses. Learned counsel for the appellant submits that he does not challenge the finding of the Tribunal on these two aspects and now he is restricting his submission only to the extent that the income of the deceased could not have been assessed as Rs. 7000/- per month which was more than double the minimum wages prevalent at that time.

12. The finding of the Tribunal while assessing the income of the deceased in para 8 of the impugned award reads as under:-

''8. Issue No. 3 As regard the actual compensation, PW-1 Smt. Shakuntala Devi through her affidavit of evidence has deposed that deceased Shyam Singh had passed his high class in year 1976, was self employed at the time of his death and was earning Rs. 17,000/- per month. PW-1 further deposed that deceased was sewing machine mechanic and used to work on contract basis. In support of the contention regarding the income of the deceased, petitioners have placed on record documents Ex. PW1/H, PW1/J and PW1/I stating to be the ledger being maintained by the deceased as regard his income but the said ledger only provides name of the persons from whom money was received and the name of the persons to whom the payment was made with no details of the expenses incurred on running house and maintaining family members. Keeping in view the fact that deceased was high school pass and was having a diploma of Vaid Visharad and testimony of PW-1 as regard the deceased being self employed and the fact that petitioners 3 to 7 was all studying school, on presumptive basis, monthly income of the deceased is taken as Rs. 7000/- per month and compensation computed on that basis. Compensation comes out to Rs. 7000/- reduced by 1/4, the amount which the deceased would have spent on himself had he remained alive in view of the large number of the family members and petitioner 3 to 7 all going to school and having definite expenses X 12 X 15, as deceased was aged around 40 years at the time of the accident being theappropriate multiplier as per Schedule II in reference to section 163A of the M.V. Act and the compensation comes out to Rs. 5250/- X 12 X 15 : Rs. 9,45,000/-. Apart from that Rs. 10,000/- are allowed on account of funeral expenses. A sum of Rs. 40,000/- on account of loss of love and affection and another Rs. 10,000/- to petitioner No. 1 on account of loss of consortium.''

13. The conclusion arrived at by learned Tribunal while assessing the income of the deceased, is based on sound reasons wherein not only qualification and the nature of the job has been taken into account but also the fact that the deceased was supporting his mother, wife and five school going children, to have fair idea to assess his earnings. It may be added here that the claimants in the claim petition claimed the income of the deceased to be about Rs. 17,000/- per months, which for the reasons quoted above, has been presumed to be Rs. 7,000/- per months by the Tribunal. The assessment cannot be termed to be on higher side. It may be noted here that in the MAC. APP. No. 461/2008 presumptive income of the deceased Shaym Singh was not challenged by the Oriental Insurance Company Ltd. (respondent No. 10 herein), which has been made equally liable to pay the compensation amount.

14. Finding no illegality or infirmity in the impugned award, the appeal is dismissed. No costs.

C.M. No. 12145/2008 (Stay) Dismissed as infructuous.