(2012) 11 DEL CK 0250

In the Delhi High Court

Case No : MAC. App. 1184 of 2012

New India Assurance Company Ltd. APPELLANT

Vs

Shakuntala Sharma and Others RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0250

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

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 4,60,926/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 10.03.2009. In the accident, the First Respondent suffered crush injury on her left leg. She remained hospitalized in Trauma Centre, LNJP Hospital from 10.03.2009 to 23.09.2009. A Disability Certificate Ex. PW-1/26 was issued by the Medical Board of the doctors of Pandit Madan Mohan Malviya Hospital, Govt. of NCT of Delhi declaring her to have suffered 50% impairment in relation to her left lower limb on account of the stiffness of the knee.

2. The finding on negligence having not been challenged by the Appellant Insurance Company have attained finality.

3. The only ground of challenge raised by the learned counsel for the Appellant Insurance Company is that the First Respondent was only a housewife. She did not suffer any functional disability with regard to the work carried out by a housewife. My attention is drawn to the testimony of PW-2 Dr. Jogender Kumar, who stated that the First Respondent shall not have any difficulty in carrying out any activities while sitting.

4. The Claims Tribunal while awarding compensation towards loss of future earning capacity granted compensation on the Minimum Wages of an unskilled worker with 50% loss of earning capacity observing that the disability suffered by the First Respondent would cause problem to her in day to day life.

5. A homemaker in her day to day working while carrying out the activities has to do lot of work while standing and moving from one corner of the house to the other. The activities also require frequent sitting and getting up.

6. While granting compensation for loss of gratuitous services by a housewife in Royal Sundaram Alliance Insurance Co. Ltd. and Vs. Master Manmeet Singh and Others etc. etc., this Court noticed following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(ii) National Insurance Co. Ltd. Vs. Deepika rep. by her guardian and next friend, Ranganathan, Ranganathan, Rajeswari and S. John Antony,

(iii) Amar Singh Thukral, Sushma, Jyotsana, Archana, Daughters of Shri Amar Singh Thukral and Ravi Kumar Vs. Sandeep Chhatwal, A.P. Verma and National Insurance Co. Ltd.,

(iv) Lata Wadhwa and Others Vs. State of Bihar and Others,

(v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,

(vi) A. Rajam Vs. M. Manikya Reddy and Another

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England), and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband''s re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

7. An Appeal being SLP (C) No. 19711/2012 filed against the above referred judgment titled ICICI Lombard General Insurance Company Limited v. Shiv Kumar & Ors., was dismissed by the Supreme Court by an order dated 24.07.2012.

8. The functional disability suffered by the First Respondent cannot be said to be less than 40%.

9. If the compensation is awarded towards the loss of earning capacity only to the extent of 40% even the same would come to Rs. 3,71,430/- which is more than the compensation of Rs. 3,54,060/- awarded towards Disability and Loss of earning capacity by the Claims Tribunal.

10. In the circumstances, the overall compensation of Rs. 4,60,926/- awarded by the Claims Tribunal cannot be said to be exorbitant and excessive.

11. The Appeal is devoid of any merit; it is accordingly dismissed.

12. If compensation amount is not deposited in UCO Bank in terms of the order dated 16.11.2012, let the Appellant deposit the compensation amount with the Claims Tribunal without any further delay and file a compliance report within two weeks.

13. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company only if the compensation is deposited with the Claims Tribunal within two weeks. Pending Applications also stand disposed of.

