(2012) 09 DEL CK 0197

In the Delhi High Court

Case No : Mac. App. 509 of 2012

New India Assurance Company Ltd. — APPELLANT

Vs

Smt. Satnam Kaur and Others — RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0197

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

Bench : Single Bench

Advocate : S.L. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 34,02,350/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 3 for the death of Nirmal Singh who died in a motor vehicle accident which occurred on 16.07.2010. The following contentions are raised on behalf of the Appellant:-

(i) As the deceased was a self employed person, the Respondents were not entitled to addition on account of future prospects.

(ii) No deduction towards payment of income tax was made while computing the loss of dependency. Reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

(iii) It is urged that the compensation of Rs. 1,00,000/- awarded towards loss of love and affection and Rs. 25,000/- awarded towards funeral expenses is on the higher side.

2. During inquiry before the Claims Tribunal it was established that the deceased was an income tax assessee for about last ten years. The Income Tax Return (ITR) for the Assessment Year 2000-01 was proved on record. The deceased returned an income of Rs. 1,20,610/-, 1,79,870/- and Rs. 2,17,490/- during the

AYs 2007-08, 2008-09 and 2009-10 respectively. This shows that there is a quantum jump in the deceased''s income on year to year basis.

3. It cannot be said that the deceased''s income was fluctuating; it would be only when the deceased''s income would have fallen in some assessment year/years. There was an increase of about 15% in the income in AY-2008-09 from the previous year. Similarly, there was an increase of over 20% in the income in AY-2009-10 from the previous year. The Claims Tribunal was, therefore, justified in making an addition of 50% towards future prospects.

4. In Sarla Verma the Supreme Court stated that in case of a self employed person usually the actual income at the time of the death should be considered to award compensation towards loss of dependency. Since, in this case the deceased''s income was gradually increasing and the deceased was aged 39 years, the Claimants were entitled to an addition of 50% in the deceased''s income to compute the loss of dependency.

5. As far as deduction of income tax is concerned, the law is well settled. The judgment of the Supreme Court in Sarla Verma supports that income tax has to be deducted from the actual income of the deceased at the time of death to compute the loss of dependency. In the Assessment Year 2010-11 there would be liability towards income tax of about Rs. 5,000/- on an income of Rs. 2,17,490/-.

6. The loss of dependency thus comes to Rs. 31,87,350/- (2,17,490/- - 5,000/- (income tax) + 50% x 2/3 x 15).

7. The Claims Tribunal awarded a sum of Rs. 1,00,000/- towards loss of love and affection. 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 only 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.

8. The Claims Tribunal awarded a sum of Rs. 25,000/- towards funeral expenses. Funeral expenses are awarded on the basis of actual expenditure. No evidence was led with regard to the expenditure on last rites. In the absence of any evidence, Courts usually award a sum of Rs. 10,000/- towards funeral expenses. The compensation awarded towards funeral expenses is thus reduced from Rs. 25,000/- to Rs. 10,000/-.

9. The Claimants are further awarded a sum of Rs. 10,000/- each towards loss to estate and loss of consortium.

10. The overall compensation thus comes to Rs. 32,42,350/- as against Rs. 34,02,350/- awarded by the Claims Tribunal.

11. Thus there is reduction of Rs. 1,60,000/- in the compensation award.

12. The excess amount of Rs. 1,60,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

13. The amount deposited shall be released in favour of the Respondents No. 1 to 3 (the Claimants) in the proportion and in the manner as directed by the Claims Tribunal.

14. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

15. The Appeal is allowed in above terms. Pending Applications also stand disposed of.