(2012) 12 DEL CK 0228

In the Delhi High Court

Case No : MAC. APP. 789 and 805 of 2012

Oriental Insurance Co. Ltd. APPELLANT

Vs

Anil Kumar Gujral and Others
 Anil Kumar Gujral and Another Vs Rajesh Singh and Others RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2013) 5 ALLMR 60

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

Bench : Single Bench

Advocate : Pradeep Gaur in MAC. app. 789/2012 and Mr. Anil Kumar Gujral, A-1 in person in MAC. app. 805/2012, for the Appellant; Anil Kumar Gujral, R-1 in person in MAC. APP. 789/2012 and Mr. Pradeep Gaur, Advocate in MAC. APP. 805/2012, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—These two Appeals arise out of a judgment dated 30th April, 2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.58,88,300/- was awarded in favour of the legal representatives of the deceased Gaurav Gujral, who died in a motor vehicle accident which occurred on 09.10.2011. MAC APP. No. 789/2012 has been filed by the Oriental Insurance Company, the Insurer of the vehicle involved in the accident, for reduction of the compensation awarded whereas MAC APP. 805/2012 has been filed by the Legal Representatives of deceased Gaurav Gujral for enhancement of compensation.

2. For the sake of convenience, the Appellant in MAC APP 789/2012 shall be referred to as ''the Insurance Company'' whereas the Appellants in Cross-Appeal 805/2012 shall be referred to as ''the Claimants''.

3. Finding on negligence reached by the Claims Tribunal has not been challenged by the Insurance Company. Thus, the same has attained finality.

4. It is not in dispute that the deceased had acquired B.Tech (Electronics & Communication) from Delhi College of Engineering in the year 2006. He completed his MBA (International Business) from the Indian Institute of Foreign Trade in the year 2010. At the time of the accident, the deceased was working as a Manager in Yes Bank Ltd. and was getting a salary of Rs.11,00,000/- per annum in addition to bonus of Rs.1,25,000/- per annum.

5. The Claims Tribunal while accepting this income deducted a sum of Rs.8,361/- per month towards conveyance, deducted a sum of Rs.2,59,000/- towards liability on income tax and applied a multiplier of 11 to compute the loss of dependency as Rs.58,43,259/- as rounded of Rs.58,43,300/-.

6. The Claims Tribunal further awarded a notional sum of Rs.25,000/- towards loss of love and affection and Rs.10,000/- each towards loss to estate and funeral expenses.

7. The overall compensation as awarded by the Claims Tribunal comes to Rs.58,88,300/-.

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

i) The letter dated 01.07.2011 by which the deceased was granted higher salary did not disclose the breakup of the salary. Thus, the sum of Rs.11,00,000/- should not have been taken as the deceased''s salary.

ii) The grant of bonus of Rs.1,25,000/- for the year 2010-2011 to the deceased cannot be said to be his regular income; the same should not have been added while computing the loss of dependency.

9. On the other hand, the learned counsel for the Claimants urges that the Claims Tribunal erred in taking a sum of Rs.8,361/- per month towards conveyance. In fact, only a sum of Rs.8,00/- per month was being paid to the deceased towards conveyance allowance.

10. It is urged that liability towards income tax for the relevant year as per the table of the computation of income tax was only Rs.2,20,000/- as against Rs.2,59,000/- made by the Claims Tribunal.

11. It is further urged that the entire income of the deceased was for himself and for his family and after deducting the conveyance allowance, the entire income must be taken into consideration to compute the loss of dependency.

12. I have before me the Trial Court record. In order to prove the deceased''s salary certificate, the Claimants examined Priya Prakash Parida (PW2), Vice President, Human Capital Management, Yes Bank, South Extension, New Delhi. She proved the letter dated 01.07.2011 as Ex. PW2/2 whereby the deceased''s salary was increased. The Appellant Insurance Company did not prefer to cross-examine the witness on the component of the gross salary. In fact, the month wise salary slip right from the month of April to the month of September were

also placed on record.

13. Perusal of the salary slips right from the month of April to the month of September shows that even before the appraisal letter dated 01.07.2011, the deceased was getting a salary of little less than Rs.9,00,000/-. Breakup of the salary is also given, which shows that except the amount of Rs.8,00/- which was paid as conveyance allowance, all the allowances were personal for the benefit of the deceased and his family. Thus, if the deceased''s salary was enhanced on appraisal w.e.f. 01.07.2011, it would be reasonable to hold that the sum of Rs.11,00,000/- mentioned as compensation for the financial year 2011-2012 contained conveyance allowance, that is, Rs.8,00/- per month, as per previous months. Thus, the Claims Tribunal rightly accepted the deceased''s income to be Rs.11,00,000/- per annum.

14. As far as addition of bonus for computation of loss of dependency is concerned, the same is also part of the salary. This was the deceased''s income at the time of his death and it, therefore, has to be taken into account to award the loss of dependency.

15. I have gone through the table for calculation of income tax for the assessment year 2012-2013, the liability of income tax on an income of Rs.12,15,400/- would be Rs.2,20,000/-.

16. The loss of dependency thus comes to Rs.67,18,950/- (11,00,000/- + 1,25,000/-(bonus)-9,600/-(conveyance allowance) = 12,15,400/--2,20,000/- (income tax) + 50% x 1/2 x 9).

17. The Claimants are further entitled to a sum of Rs.25,000/- towards loss of love and affection and Rs.10,000/- each towards loss to estate and funeral expenses.

18. The overall compensation thus comes to Rs.67,63,950/-.

19. Thus, the compensation is enhanced from Rs.58,88,300/- to Rs.67,63,950/-, which shall carry interest @ 9% per annum as awarded by the Claims Tribunal from the date of filing the Detailed Accident Report till the payment of enhanced compensation. The compensation shall enure for the benefits of both the Claimants in equal share.

20. It is urged by the learned counsel for the Claimants that by judgment dated 30.04.2012 a large part of the amount has been held to be in long terms fixed deposit. The Claimants belong to educated family and there is no possibility of the amount being drifted away or misutilized. It is urged that a larger sum may be ordered to be released in cash to the Claimants.

21. The enhanced compensation shall be deposited with the Claims Tribunal within six weeks. In the facts and circumstances of the case, it is directed that 50% of the enhanced compensation along with proportionate interest shall be held in fixed deposit for a period of 3 years on which the Claimants shall be

entitled to quarterly interest. Rest 50% shall be released on deposit.

22. In view of the above, MAC APP. 789/2012 filed by the Insurance Company is hereby dismissed and MAC APP. 805/2012 filed by the Claimants is allowed.

23. The statutory deposit of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.

