(2015) 03 DEL CK 0374

In the Delhi High Court

Case No : M.A.C. App. 3 of 2007

Oriental Insurance Co. Ltd. APPELLANT

Vs

Keshav Nand Sharma and Others RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 2 ACC 794

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

Bench : Single Bench

Advocate : A.K. Soni for Pradeep Gaur, for the Appellant

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The instant appeal is directed against the judgment dated 20.9.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 2,70,920 was awarded in favour of Respondent No. 1 for the death of his son Vijay Nand, a bachelor who succumbed to the fatal injuries sustained in a motor vehicular accident which occurred on 19.8.1997. There is twin challenge to the impugned judgment. First, the compensation awarded is exorbitant and excessive as deduction towards personal and living expenses ought to have been made to the extent of 50%, the deceased being a bachelor and the multiplier on the basis of age of mother of the deceased ought to have been taken. Second, since the driving licence of the driver was found to be fake, the Appellant Insurance Company ought to have been granted recovery rights.

2. I have perused the Trial Court record. I will agree with the learned Counsel for the Appellant that in case of a bachelor, deduction towards personal and living expenses have to be 50% [see Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487

and the multiplier has to be as per the age of the deceased or the claimant, whichever is higher. A reference in this connection may be made to U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, (1996) ACJ 831 : (1996) 4 AD 587 : (1996) 6 JT 356 : (1996) 113 PLR 537 : (1996) 4 SCALE 522 : (1996) 4 SCC 362 : (1996) 2 SCR 443 Supp : (1996) 2 UJ 292 ; Manam Saraswathi Sampoorna Kalavathi and Others Vs. The Manager APSRTC, Tadepalligudem A.P. and Another, (2010) ACJ 1245 : AIR 2010 SC 1609 : (2010) 126 FLR 59 : (2010) 3 JT 335 : (2010) 2 LLJ 604 : (2010) 159 PLR 294 : (2010) 2 SCALE 193 : (2010) 5 SCC 785 : (2010) 3 SCR 872 ; and the judgment of this Court in Vijay Laxmi and Another Vs. Binod Kumar Yadav and Others, (2012) 6 ILR Delhi 447 .

3. The salary of the deceased was taken to be Rs. 1,850 per month which was equal to the minimum wages of a semi-skilled worker at the relevant time. Therefore, the loss of dependency comes to Rs. 1,44,300 (Rs. 1,850 % 2 x 12 x 13).

4. In addition, in view of three Judge Bench decision of the Supreme Court judgment in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , I further award a sum of Rs. 1,00,000 towards loss of love and affection, Rs. 25,000 towards funeral expenses and Rs. 10,000 towards loss to estate.

5. The overall compensation thus, comes to Rs. 2,79,300, which is slightly more than the what was awarded by the Claims Tribunal. Therefore, it cannot be said that the compensation awarded by the Claims Tribunal is exorbitant or excessive.

6. As far as liability of the Appellant Insurance Company is concerned, although the Appellant proved that licence No. S 1071/MRT/87 was issued by the Licensing Authority, Meerut in the name of one Shahid Hasan S/o. Manzoor Ahmed and not in the name of Prem Singh, the driver of the offending vehicle, yet the Appellant failed to prove that there was conscious and willful breach of the terms and conditions of the insurance policy on the part of the insured. No notice was issued to the owner of the insured vehicle to prove the driving licence of the driver. Hence, in my view, the Appellant failed to discharge the initial onus placed upon it. The Appellant''s liability, therefore, cannot be disputed.

7. Since the Appellant Insurance Company failed to prove that there was conscious and willful breach of the terms and conditions of the insurance policy by the insured, the Appellant was rightly declined recovery rights by the Claims Tribunal.

8. The appeal, therefore, has to fail; the same is accordingly dismissed.

9. The compensation payable to Respondents (claimants) shall be disbursed/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.

10. Pending applications, if any, also stand disposed of. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.