

(2008) 01 DEL CK 0074
In the Delhi High Court
Case No : MAC App No. 295 of 2006

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Mrs. Sunita Sahni		RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0074

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Joy Basu and M. Kumar, for the Appellant; Aashuman, for the Respondent

Judgement

Kailash Gambhir, J.—By way of present appeal, counsel for the appellant seeks to challenge the impugned award for compensation of Rs. 2,70,000/- as has been awarded in favor of the respondents/claimants. Brief summary of the facts relevant for deciding the present appeal are as under:

On 31.7.1996 due to rash and negligent driving of the driver of the vehicle bearing registration No. UP 14E 2041, Lalit Kumar the son of the respondent No. 1 sustained multiple injuries and ultimately he succumbed to his injuries. Accordingly, a claim petition was filed before the MACT and award was passed on 6.12.2005. Aggrieved with the said award, the present appeal is preferred by the appellant insurance company.

2. Counsel for the appellant contends that the Tribunal has not correctly taken into account the income of the deceased under the Minimum Wages Act. Counsel for the appellant contends that the deceased has left behind a widow and a son and Therefore, half of the expenses should have been taken into account towards personal expenses and not one third as allowed by the Tribunal.

3. Counsel appearing for respondent submits that there is no illegality in the impugned award. Counsel further contends that award passed by Tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

4. I have heard counsel for the parties and have perused the records.

5. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , the Hon''ble Supreme Court discussed the purpose of enacting MV Act, the relevant paragraph is reproduced as under:

10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, has introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident.

6. Under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. But the only embargo is that it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

7. In this regard the Hon''ble Apex Court observed in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, and *State of Haryana and Another Vs. Jasbir Kaur and Others*, as under:

15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable

to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just.

8. The Tribunal has taken into consideration the minimum wages which were applicable on the relevant date of accident and Therefore, no fault can be found with the same. The deceased has left behind a widow and a son and Therefore, the deduction of one third towards personal expenses is also correct.

9. There is no merit in the present appeal and the same is dismissed.