(2023) 05 DEL CK 0256

In the Delhi High Court

Case No : MAC.APP. No. 133 Of 2022, Civil Miscellaneous Application No. 51947 Of 2022

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Priyanka Sen & Ors. — RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 05 DEL CK 0256

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Abhishek Gola, C.M.Patel

Final Decision : Disposed Of

Judgement

Rekha Palli, J

1. The present appeal preferred by the insurer under Section 173 of the Motor Vehicles Act, 1988, assails the award dated 16.11.2021 passed by the learned Motor Accident Claim Tribunal. Vide the impugned award, the learned Tribunal has directed the appellant to pay a sum of Rs.15,64,408/- as compensation to the respondents alongwith interest @ 6% p.a.

2. Learned counsel for the appellant submits that the only ground on which the present appeal has been filed is that the learned Tribunal while computing the income of the deceased for determining the compensation towards loss of dependency has instead of making a deduction of 1/3rd, erroneously made a deduction of only 1/4th towards the personal expenses of the deceased. He submits that since it is an admitted position that Ms.Mankali Sen, the married sister of the deceased was not residing with him at the time of the accident, she could not be treated as a dependant. Consequently, the Tribunal erred in including her as a dependant and thereby holding that there were four dependants of the deceased. He, therefore, contends that a deduction of 1/3rd

was required to be made from the income of the deceased for determining the compensation towards loss of dependency. He, therefore, prays that the appeal be allowed and the compensation awarded by the learned Tribunal be suitably modified.

3. Learned counsel for the respondent does not deny this factual position and fairly concedes that a deduction of 1/3rd was required to be made from the income of the deceased for determining the loss of dependency.

4. Having perused the impugned order, I find that though the learned Tribunal has in para 35 and 36 of the award directed that 1/4th amount was to be deducted towards personal and living expenses of the deceased and is, accordingly, computed the loss of dependency as being Rs.13,74,408/-, it has in Form IV A of the award had directed a deduction of 1/3rd amount towards personal expenses of the deceased and has consequently, computed the loss of dependency to be Rs.11,53,824/-.

5. In the light of the aforesaid, it emerges that the Tribunal has inadvertently granted two different amounts towards loss of dependency by directing deduction of 1/4th in para 36 of the award and a deduction of 1/3rd in Form IV A of the award. Evidently, one of these calculations is incorrect. Since learned counsel for the respondent fairly admits that a deduction of 1/3rd was required to be made towards the personal expenses of the deceased, the calculations in para 36 of the award, which are based on deduction of 1/4th amount has to be rejected. The appeal, therefore, deserves to be allowed by directing that from the monthly income of the deceased including future prospects a deduction of 1/3rd amount would be made for determining the loss of dependency.

6. For the aforesaid reasons, the compensation payable under the loss of dependency would stand reduced from Rs.13,74,408/- to Rs.12,21,696/-. The appeal is, accordingly, allowed by directing that the compensation under the impugned award would stand reduced to Rs.12,21,696/- in the following terms, which amount along with interest @ 6% per annum will be payable to the claimants:-

S.No.

Heads

Awarded by the Tribunal

Awarded by this Court

1.

Income of the deceased (A)

Rs.6,060/-

Rs.6,060/-

2.

Add – Future prospects (B)

Rs.2,424/-

Rs.2,424/-

3.

Less – Personal expenses of the deceased (C)

Rs.2,121/-

Rs.2,828/-

4.

Monthly loss of dependency [(A+B)-C=D]

Rs.6,363/-

Rs.5,656/-

5.

Annual loss of dependency (D*12)

Rs.76,356/-

Rs.6,7872/-

6

Multiplier (E)

18

18

7.

Total loss of dependency (D*12*E=F)

Rs.13,74,408/-

Rs.12,21,696/-

8.

Medical Expense (G)

Nil

Nil

9.

Compensation for Loss of Consortium (H)

Rs.80,000/-

Rs.80,000/-

10.

Compensation for loss of estate (I)

Rs.15,000/-

Rs.15,000/-

11.

Compensation towards funeral expenses (J)

Rs.15,000/-

Rs.15,000/-

12.

TOTAL COMPENSATION

(F+G+H+I+J=K)

Rs.15,64,408/-

Rs.13,31,696/-

7. The appeal stands disposed of in the aforesaid terms.