(2011) 09 DEL CK 0356

In the Delhi High Court

Case No : MAC Appeal No''s. 65 and 429 of 2010

Oriental Insurance Company — APPELLANT

Vs

Nirja Bhatt and Others — RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : (2012) 2 TAC 579

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Sandeep Kapoor, for the Respondent

Final Decision : Disposed Off

Judgement

Indermeet Kaur, J.—These are two appeals which have been preferred by the Insurance Company as also by the claimants; the Insurance Company has sought a reduction in the awarded amount whereas the claimants have sought an enhancement. The impugned Award has awarded a sum of Rs. . 15,59,500/- in favour of the claimants. Record shows that the deceased was a Doctor by profession; he was retired Brigadier Prasant Narain Bhatt; on 26th June, 1999 while returning from Nimhans Hospital and going towards Gurgaon, he had suffered an accident with the offending tanker as a result of which he succumbed to his injuries. Claim petition had been filed by his widow and two minor children.

2. The owner and driver had failed to contest the proceedings. The Insurance Company had contested them. The Court while disposing off issue No. 1 had taken site plan into consideration which was admittedly not filed in the course of the trial but had been filed by the Insurance Company alongwith its written submissions. Written submissions filed by the Insurance Company had appended a copy of a site plan which was the basis of the compensation given by the MACT on issue No. 1. This was a wrong approach; without getting the site proved, there was no chance given to the claimants to dispute its veracity; it was also not a certified copy of the document; its authenticity was not known to any

person and definitely not to the claimants at the time when the judgment was passed; as noted supra, this site plan has surfaced only at the time when the written submissions were filed by the Insurance Company. The Tribunal had initially after considering the evidence calculated a liability of Rs. . 31,19,000/- qua the respondents; this was the amount to be awarded in favour of the claimants but having taking note of the site plan, the Court had recorded that the site plan had evidenced that Maruti vehicle being driven by the deceased was coming from the wrong side and, since, he had contributed to the negligence in the accident, 50% of the awarded amount had been deducted which had been reduced to Rs. . 15,09,500/- which was the awarded amount of compensation under the head of ''loss of dependency''. For the reasons as aforenoted, this was an incorrect and illegal approach; the site plan could not have been read in evidence. A valuable right of the claimants had been lost to dispute its authenticity and veracity. All along, the case of the claimants was that the deceased was not negligent and the accident had occurred because of the negligence of the offending tanker. Finding on issue No. 1 is thus set aside.

3. The Counsel for the Insurance Company has drawn attention of this Court to the testimony of PW-2 as also the income tax returns which had been filed and placed on record (Ext. CW-1/1) by the widow of the deceased which document had evidenced the income of the deceased as Rs. . 2,05,095/-. This is amply borne out from Ext. CW-1/1. In this scenario, the Tribunal having relied upon the testimony PW-2 to take into account the consultancy charges between the period from November 1998 to March, 1999 and then computing the income of the victim at Rs. . 40,000/- per month was a wrong approach; documentary evidence i.e. Ext.CW-1/1 was for the assessment year from 1st April, 1998 to 31st March, 1999; these payments as sought to be adduced in the testimony of PW-2 were admittedly not reflected in Ext. CW-1/1. As noted supra, Ext.CW-1/1, income of the deceased had evidence at Rs. . 2,05,095/-. This was thus correct income of the deceased. Deducting 10% amount from the aforenoted sum as compulsory deduction of tax, the rounded figure would be Rs. . 1,86,000/-; 1/3rd was deducted as expenses which was approximately Rs. . 62,000/- equaling a sum of Rs. . 1,24,667/- which is rounded off at Rs. . 1,25,000/-. The correct multiplier to be adopted was 9 and applying this multiplier of 9 to Rs. . 1,25,000/-, the figure thus under the ''loss of dependency'' is calculated as Rs. . 11,25,000/-. The amount of Rs. . 30,13,416/- is accordingly substituted with the figure of Rs. . 11,25,000/-. A sum of Rs. . 75,000/- awarded under the head of ''love and affection'' for the three dependents; Rs. . 10,000/- as ''loss of consortium'' and Rs. . 10,000/- as ''funeral expenses''; another sum of Rs. . 10,000/- for ''loss of estate'' had been awarded in favour of the claimants. These amounts call for no interference. The total amount would thus reads as Rs. . 12,30,000/-. This amount shall carry interest @ 7.5% per annum which would be from the date of filing of the petition till realization. Both the appeals are disposed off in the above terms.