(2012) 04 DEL CK 0097

In the Delhi High Court

Case No : MAC. APP. No. 304 of 2011

Oriental Insurance Company Limited APPELLANT

Vs

Roshni Devi and Others RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0097

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

Bench : Single Bench

Advocate : Saurav Kmar Tuteja, for the Appellant; S.D. Sudhi, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs.4,87,380/- awarded for the death of Jaipal Singh, who was a retired police officer. He met with a tragic death at the age of 70 years. He was survived by his widow Roshni Devi, the First Respondent and his son Virender Singh, the Second Respondent, who was an army officer. The contentions raised on behalf of the Appellant Insurance Company are:

i) That the deceased left behind only the widow as a legal representative, who was financially dependent on the deceased. The deduction of 1/3rd towards personal expenses was not warranted, which should have been 50%. 1/3rd of the deceased''s income towards loss to estate was not justified in view of the pension of Rs.8,682/- per month.

ii) The compensation of Rs.1,00,000/- awarded towards the loss of love and affection is exorbitant and excessive.

2. On the other hand, the learned counsel for the Respondents No.1 and 2 argues that the First Respondent was left without any company at the fag end of his life as her only son was posted in North-East. It is contended that in the circumstances, the personal expenses were rightly taken as 1/3rd by the Claims

Tribunal and remaining 2/3rd should have been taken as the loss of dependency.

3. The Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, laid down the following principles for grant of compensation in death cases:-

I. MULTIPLIER

Age of the deceased (in years)

Multiplier

15-20

18

21-25

18

26-30

17

31-35

16

36-40

15

41-45

14

46-50

13

51-55

11

56-60

09

61-65

07

Above 65

05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased - unmarried

(i)

Deduction towards personal expenses.

:

1/2 (50%)

(ii)

Deduction where the family of the bachelor is large and dependent on the income of the deceased.

:

1/3rd (33.33%)

Deceased - married

(i)

2 to 3 dependent family members.

:

1/3rd

(ii)

4 to 6 dependent family members

:

1/4th

(iii)

More than 6 family members

:

1/5th

(iv)

Subject to the evidence to the contrary.

:

Father, brother and sisters will not be considered as dependents.

4. The Supreme Court was very clear that in case of a bachelor, there would be deduction of 50% towards the personal and living expenses. In case of death of a married person where the number of dependents are two to three, 1/3rd deduction towards personal and living expenses was suggested. Therefore, even

if in case of the death of a married person leaving behind a widow as the only financially dependent person, the deduction towards personal and living expenses should be 50%. However, considering the peculiar facts and circumstances of the case as the First Respondent has been left without any company and is residing on her own in the Metropolitan city, I would award a compensation of 2/3rd of the deceased''s pension towards loss of dependency.

5. The loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted Rs. 25,000/- (in total to all the claimants) only under the head of loss of love and affection. Thus, I would reduce the compensation under this head from Rs. 1,00,000/- to Rs. 25,000/- only.

6.The overall compensation is thus reduced from Rs. 4,87,380/- to Rs. 4,12,380/-.

7. The excess amount of Rs.75,000/- along with proportionate interest and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

8. The balance amount shall be released to the First Respondent in terms of the order passed by the Claims Tribunal.

9. The Appeal is allowed in above terms. The statutory amount of Rs.25,000/- shall be refunded to the Appellant Insurance Company.