(2014) 07 DEL CK 0235

In the Delhi High Court

Case No : MAC App. 530/2014

Oriental Insurance Company Ltd. APPELLANT

Vs

Mohd. Sharafat RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2014) 07 DEL CK 0235

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : V.K. Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM No. 10219/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

MAC. APP. 530/2014

1. The present appeal is preferred against the impugned award dated 15.03.2014, whereby the learned Tribunal has granted compensation for an amount of Rs. 16,56,550/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount.

2. Mr. V.K. Gupta, learned counsel appearing on behalf of the appellant/Insurance Company submits that the deceased, Mohd. Usman was 38 years of age on the date of the accident, i.e., 01.09.2012. The claimants claimed that the deceased was in the business of selling fish and was earning around Rs. 20,000/- per month from the said business. Since the claimants failed to prove the avocation and income of the deceased, therefore, keeping in mind the Minimum Wages Act,

1948, the learned Tribunal has assessed the income of the deceased as Rs. 7020/- per month applicable to an unskilled worker at the prevalent time.

3. Learned counsel further submits that the learned Tribunal has erred in adding 50% of the income of the deceased in his actual income towards future prospects being contrary to the settled law as the deceased was not in permanent employment.

4. To support his submissions, he has relied upon the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which has been further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr., delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013.

5. Learned counsel further submits that the compensation granted by the learned Tribunal towards non-pecuniary damages, such as for loss of love and affection and loss of consortium Rs. 1,00,000/- each and for funeral expenses Rs. 25,000/- is on higher side. He submits that though it is the discretion of the Tribunals to award compensation under non-pecuniary damages, however, the learned Tribunal ought to have considered the facts and circumstances of the case in order to grant just compensation. He submits that the deceased was in the business of selling fish, he left behind a widow, one son, one daughter and parents, therefore, there was no occasion to grant such higher compensation on account of non-pecuniary damages.

6. So far as the issue regarding income of the deceased is concerned, as claimed, the deceased was in the business of selling fish and was earning about Rs. 20,000/- per month. Moreover, PW2, Sharafat Hussain, deposed that he was earning Rs. 10,000/- to Rs. 12,000/- per month from the said business.

7. Since no document regarding the financial status of the deceased was produced on record, however, PW2 in his cross-examination deposed that the deceased was selling fish on the roadside, hence, the learned Tribunal has assessed his monthly income as Rs. 7020/- as applicable to an unskilled worker as per the Minimum Wages Act, 1948.

8. As far as the issue of future prospects is concerned, the same has been dealt with by this Court in the case bearing MAC. APP. No. 846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors., decided on 30.09.2013, wherein held as under:-

22. The Apex Court in Rajesh has discussed the issue regarding the assessment of future prospects; and has also come to a specific conclusion that the self-employed or persons with fixed wages are entitled for future prospects. The Apex Court succinctly specified the reasons for the same considering the socio-economic changes in the society. It also made thrust on the age of the deceased as one of the factors for computing the future prospects.

23. I note, the Apex Court in Santosh Devi noted the finding in Sarla Verma; and

canvassed a different reasoning regarding the assessment of future prospects: one of the factors in the multiplicand.

24. The Apex Court in Santosh Devi, did not refer the matter to a Larger Bench, whereas it followed all the principles formulated in Sarla Verma except the finding in respect of the assessment of future prospects for the persons falling under the category of self-employment/fixed wages.

25. It is legally significant to note the dictum laid down by the Constitution Bench of Apex Court in Central Board of Dawoodi Bohra Community and Anr. (Supra). The Apex Court held as under:

12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

26. While considering the case of Santosh Devi, the Apex Court did not feel to refer the matter to a Larger Bench. Therefore, it can be concluded that there is no contradictions in the finding of Sarla Verma and Santosh Devi, in turn the Apex Court extended the scope and ambit of Sarla Verma through Santosh Devi.

27. In view of above, this court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon''ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self-employment/fixed wages this court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh.

9. Admittedly, the deceased was aged 38 years on the date of the accident. He was maintaining a big family comprising of a widow, two minor children and old parents. PW2 has deposed that deceased was earning around Rs. 10,000/- to Rs.

12,000/- from the business of selling fish. Thus, keeping in mind the Minimum Wages Act, 1948, the learned Tribunal has assessed the monthly income of the deceased as Rs. 7020/- as applicable to an unskilled worker at the relevant time.

10. Therefore, keeping in mind the view taken by this Court in the case of Angrej Singh & Ors. (supra) while relying upon the dictum of the Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, , the age of the deceased, i.e., 38 years at the time of accident and the facts and circumstances of the case, I find no merit in the submissions of the learned counsel on the issues of income of the deceased as well as addition of 50% future prospects in his actual income.

11. As regards the issue of compensation granted towards non-pecuniary damages being on higher side is concerned, the deceased died at the young age of 38 years. Due to his death, his young widow lost the association of her husband and enjoyment of life, two minor children, i.e., one son and one daughter have lost the love, affection and care of their father and his guidance for their future career, parents also deprived of love and affection of their son and have lost the support in their old age.

12. Keeping in view the size of the family and dependency upon the deceased, I find no discrepancy in the award granting compensation towards non-pecuniary damages.

13. Hence, finding no merits in the appeal, the same is dismissed in limine.

14. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the compensation with upto date interest in favour of the respondents/claimants in terms of the award dated 15.03.2014 passed by the learned Tribunal on taking necessary steps by them.

CM. No. 10218/2014 (for stay)

With the dismissal of the appeal itself, the instant application has become infructuous. The same is accordingly dismissed.