

(2009) 09 DEL CK 0316

In the Delhi High Court

Case No : MAC. APP. No. 668 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Neelam Jain and Others

RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0316

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant; Arun Srivastava, for R-1 to 4 and Ashwini Bhardwaj, for R-5, for the Respondent

Final Decision : Partly Allowed

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 22,25,000/- has been awarded to claimants/respondents No. 1 to 4.

2. The accident dated 25th September, 2004 resulted in the death of Sidh Raj Jain. The deceased was survived by his widow and three minor children who filed the claim petition before the learned Tribunal.

3. The deceased was working as Senior Establishment Officer with M/s Hyderabad Industries Ltd. earning Rs. 12,500/- per month. The learned Tribunal took the future prospects into consideration by taking the average of Rs. 12,500/- and its double. 1/3rd was deducted towards personal expenses of the deceased and the multiplier of 15 was applied to compute the loss of dependency at Rs. 22,50,000/-. Rs. 5,000/- has been awarded towards funeral expenses and Rs. 25,000/- has been awarded towards loss of consortium. The total compensation awarded is Rs. 22,25,000/-.

4. The learned Counsel for the appellant has urged two grounds at the time of hearing of this appeal. The first ground of challenge is that the driver of the offending vehicle was not holding a valid driving licence. The second ground of

challenge is that the award amount is exorbitant and be reduced.

5. With respect to the driving licence, respondent No. 5 has placed on record the driving licence of the driver along with his reply. Vide order dated 29th January, 2009, the appellant was directed to verify the said driving licence. The appellant has verified the driving licence produced by respondent No. 5 to be genuine. However, the appellant submits that the driver of the offending vehicle produced a different driving licence before the police which was found to be fake and the driver could not have held two driving licences. The learned Counsel for respondent No. 5 submits that the driver of the offending vehicle has expired on 21st March, 2006 and the criminal case against him has also abated. The learned Counsel for respondent No. 5 further submits that the driver was employed by his father after verifying the driving licence now produced before this Court and his father has also since expired. The learned Counsel for respondent No. 5 further submits that respondent No. 5 was not served before the learned Tribunal and, therefore, respondent No. 5 did not have the opportunity to produce this driving licence before the learned Tribunal. The learned Counsel for respondent No. 5 further submits in view of the death of the driver of the offending vehicle as well as his father who had employed the driver after verifying the driving licence, respondent No. 5 is in no position to explain as to how the driver of the offending vehicle was holding two driving licences.

6. Considering that the appellant has verified the driving licence of the driver produced by respondent No. 5 to be genuine, it is held that the driver of the offending vehicle was holding a valid driving licence at the time of the accident. The issue of validity of two driving licences held by the driver at the time of the accident cannot be decided in this case in view of the death of the driver of the offending vehicle as well as the father of respondent No. 5 and is, therefore, left open to be decided in an appropriate case. However, this decision shall not be treated as precedent on the issue of driver holding two driving licences at the time of the accident.

7. With respect to the quantum of compensation awarded by the learned Tribunal, the learned Counsel for the appellant submits that the deceased was aged 45 years and the appropriate multiplier according to the recent judgment of the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The learned Counsel further submits that the learned Tribunal has added 50% of the income towards future prospects whereas it should be 30% according to the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (supra). Following the aforesaid judgment of the Hon'ble Supreme Court, the multiplier applied by the learned Tribunal is reduced from 15 to 13 and the future prospects of the deceased are taken to be 30% instead of 50%. The learned Tribunal has deducted 1/3rd towards personal expenses of the deceased whereas the same should have been deducted @ 1/4th considering that the deceased has left behind four legal representatives.

8. Taking the income of the deceased to be Rs. 12,500/- per month, adding 30%

towards future prospects, deducting 1/4th towards personal expenses of the deceased and applying the multiplier of 13, the loss of dependency is computed to be Rs. 19,01,250/- $[(Rs. 12,500 + 30\% \text{ of } Rs. 12,500) \times 3/4 \times 12 \times 13]$.

9. The learned Tribunal has awarded Rs. 25,000/- towards loss of consortium and Rs. 5,000/- towards funeral expenses which are not disturbed. Rs. 10,000/- is awarded towards loss of love and affection and Rs. 10,000/- has awarded towards loss of estate. The claimants are entitled to total compensation of Rs. 19,51,250/- (Rs. 19,01,250 + Rs. 25,000 + Rs. 5,000 + Rs. 10,000 + Rs. 10,000).

10. The appeal is partly allowed and the award amount is reduced from Rs. 22,25,000/- to Rs. 19,51,250/- along with interest @7.5% from the date of filing of the petition till realization.

11. The appellant has deposited Rs. 10,00,000/- with the learned Tribunal in terms of the order dated 4th August, 2006 which has been released to the claimants. The appellant is directed to deposit remaining award amount along with interest with the learned Tribunal within 30 days.

12. Upon such deposit being made, the learned Tribunal is directed to disburse the award amount to the claimants in the same manner and proportion as in the original award.

13. Copy of this order be given "Dasti" to learned Counsel for both the parties under signature of Court Master.