

(2014) 07 DEL CK 0041
In the Delhi High Court
Case No : MAC App. 518/2014

Oriental Insurance Company Ltd.

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 163A

Citation : (2014) 07 DEL CK 0041

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : P.K. Mishra, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

C.M. APPL. 9742/2014 (for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

MAC. APP. 518/2014

1. Admit.

2. Vide the present appeal the appellant/Insurance Company has challenged the award dated 05.03.2014 whereby the learned Tribunal awarded compensation for an amount of Rs. 6,97,140/- with interest @ 9% per annum from the date of filing of the claim petition till realisation of the amount.

3. Learned counsel appearing on behalf of the appellant submits that the age of the deceased was 21 years on the date of the accident i.e. 03.03.2007 and he was a bachelor, thus, learned Tribunal ought to have applied the multiplier as per the age of parents.

4. The second issue raised in the instant appeal is that the claimant failed to prove that the deceased was in a permanent job and despite that the learned Tribunal added 50% in his actual income contrary to the settled law by the Apex Court in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, affirmed by the Full Bench of the Apex Court in case of Reshma Kumari & Ors. vs. Madan Mohan & Anr. delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013.

5. As far as the issue of multiplier is concerned, the same has been decided by this Court in the case of Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. bearing MAC. APP. No. 152/2014, decided on 24.03.2014, whereby this Court held as under:-

21. The maximum value of the multiplier is fixed at "18", which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in Trilok Chandra, introduced a structural change by increasing the numerical value of multiplier from "16" to "18", whereas it had been fixed at "16" as per Susamma Thomas. Specifically, there was no variation in respect of fundamental premise of "multiplier method" as held in Susamma Thomas. In Trilok Chandra, the apex court has taken the second schedule as a guiding factor.

23. Significantly, the Apex Court in the case of Reshma Kumari and M. Nag Pal has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to "15" the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above "15" years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never considered as a factor. Finally, in the assessment of dependency, the courts/tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.

6. Admittedly, age of the deceased was 25 years on the date of accident. Thus, I find no substance in the argument of the counsel for the appellant on this issue.

7. As far as the issue of future prospects is concerned, this issue has already 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, while relying upon the dictum of the Apex Court in the case of

Rajesh and Others Vs. Rajbir Singh and Others, , wherein the Full Bench of the Supreme Court has held as under:-

11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

8. The deceased was in a private job and claimed to be earning Rs. 7,000/- per month. Since, the claimant failed to prove the income and employment of the deceased, therefore, the learned Tribunal assessed his income as Rs. 3,470/- applicable to unskilled labourers as per Minimum Wages Act.

9. Admittedly, the recovery rights have been given to the appellant. In view of the settled law as discussed above, I find no merit in this appeal and the same is accordingly dismissed.

C.M. APPL. 9743/2014 (for stay)

In view of the aforesaid order in the appeal, the instant application for stay has become infructuous and the same is accordingly dismissed.