

(2012) 05 DEL CK 0407

In the Delhi High Court

Case No : MAC App. 260 of 2004 and MAC App. 476 of 2012

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shefali goel and Others
 Shefali goel and Others Vs
Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Citation : (2012) 130 DRJ 563

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

Bench : Single Bench

Advocate : Joy Basu, in MAC app. 260/2004 and Mr. O.P. Mannie, in MAC app. 476/2012, for the Appellant; O.P. Mannie, Advocate for the Respondents No. 1 to 7, in MAC App. 260/2004 and Mr. Joy Basu, Advocate, in MAC App. 476/2012, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—These are two Appeals (MAC APP. No. 260/2004 and MAC APP. No. 476/2012) arise out of a judgment dated 20.02.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.45,64,320/- along with interest @ 7% per annum was awarded for the death of Raj Narain Goel, who died in an accident which occurred on 13.08.2000. MAC APP No. 260/2004 filed by the Oriental Insurance Company Ltd. is for reduction of compensation and Cross-Objections registered as MAC APP. No. 476/2012 filed by the Respondents No. 1 to 7 is for enhancement of compensation.

2. The only ground of challenge raised on behalf of the Insurance Company during the course of the hearing is that the deduction towards Income Tax was not made by the Claims Tribunal before computing the loss of dependency. Reference is made to the judgment of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

3. On the other hand, it is urged on behalf of the Respondents No. 1 to 7 that

there were as many as seven dependents. Since the number of dependents were seven, 1/5th deduction should have been made towards the personal and living expenses. Reliance is placed on a recent report of the Supreme Court in Santosh Devi v. National Insurance Company & Ors, Civil Appeal No. 3723/2012 decided on 23.04.2012. It is stated that the compensation of Rs.5,000/- awarded towards loss of consortium is very meager. A compensation of Rs. 1,00,000/- ought to have been awarded under this head. The award of interest @ 7% is also stated to be very low.

4. The learned counsel for the Respondents No. 1 to 7 relies on Smt. Sarla Dixit and another Vs. Balwant Yadav and others, in support of his plea that the Income Tax is not to be deducted from the income, whereas the learned counsel for the Appellant Insurance Company presses into service the report of the Supreme Court in Sarla Verma (Supra) in support of his contention that the Income Tax is required to be deducted for the computation of loss of dependency.

5. Sarla Dixit(supra) relates to the death of a person who was working as a Captain in the Army and was getting a salary of Rs. 1500/- per month in the year 1975. The dependents were his widow and a minor daughter. It was in these circumstances i.e. his income was very meager though taxable and the dependents were a widow and a minor child that the Supreme Court held that deduction of 1/3rd may be made towards the personal expenses and the liability towards payment of Income Tax etc. It was not laid down as a general principle of law that the liability towards Income Tax is not to be taken into consideration or that it would be covered in 1/3rd deduction. In Sarla Verma(supra), it was laid down that the Income Tax has to be deducted for computation of the compensation. Para 20 of the report is extracted hereunder:

20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.

Therefore, in my view, the Claims Tribunal erred in not deducting Income Tax from the income of the deceased.

6. As far as deduction towards the personal and living expenses is concerned, reliance on Santosh Devi (supra) is misplaced. There are two type of expenses for the deceased. Firstly, the personal expenses which may also be called out of pocket expenses. These are the expenses incurred by an employee or a self employed person incidental to the employment i.e. the expenses towards tea, snacks and for reaching the place of employment; this would also include expenses towards the pleasure. The other would be the living expenses or in other words the expenses for sustenance i.e. on food, clothing etc. etc. The expenses on food and clothing would be equal for the other members of the family and a person having a very low income may not spend anything towards his pleasure or entertainment. He may spend a very minimal amount on tea,

snacks etc. during the course of employment. In para 15 of the report in Santosh Devi(supra), the Supreme Court referred to the personal expenses which were confined to the expenses incidental to employment and for pleasure etc. The rest of the money which is spent on the living expenses i.e. towards food and clothing is normally spent equally for all the members of the family dependent on the deceased.

7. In this case, the number of dependents including the father were seven. Shefali Goel, the First Respondent testified about the number of the dependents and stated that there is no other legal heir. The deceased Raj Narain was 44 years old on the date of the accident and at the time his father must be 65 to 70 years old. I would, therefore, consider him to be dependent on the deceased. Since the number of dependents were seven, there would be deduction of 1/5th on account of the personal and living expenses of the deceased.

8. The Claims Tribunal awarded a compensation of Rs. 5,000/- towards loss of consortium. Usually, a conventional sum of Rs. 5,000/- to 10,000/- is awarded towards the head of loss of consortium (per Sarla Verma (supra)). Since this accident took place in the year 2000, in the circumstances, I would not interfere with the discretion of the Claims Tribunal in awarding a compensation of Rs. 5,000/- under this head.

9. Thus, in view of the above discussion, the loss of dependency comes to Rs. 34,10,565/- (Rs. 26199 X 12 = 3,14,388 - 80145(Income Tax) + 30% X 4/5 X 14). On adding a sum of Rs. 30,000/- towards love and affection (as granted by the Claims Tribunal towards pain and suffering), Rs. 10,000/- towards funeral expenses and Rs. 5,000/- each towards loss of consortium and loss to estate, the total compensation comes to Rs. 34,60,565/-.

10. It is urged that the interest awarded @ 7% was very low. This accident took place in the year 2000; the Claim Petition was instituted in February, 2001 and was decided in the year 2004. During all this time, the inflation and the rate of interest were very low. The award of interest @ 7% was just and reasonable. It does not call for any interference.

11. The overall compensation thus stands reduced from Rs. 45,64,320/- to Rs. 34,60,565/-.

12. The excess amount of Rs. 11,03,755/- along with proportionate interest shall be recoverable from the Respondents No. 1 to 7 in the proportion of the award made by the Claims Tribunal. They shall be liable to pay interest @ 7% per annum from the date they received the payment till it is deposited with the Claims Tribunal. If they make the deposit of the amount within a period of three months from the date of the order i.e. before 11.08.2012, they shall not be liable to pay any interest from the date they received the payment upto the time of redeposit with the Claims Tribunal. Both the Appeals are disposed of in above terms.