(2011) 01 DEL CK 0387

In the Delhi High Court

Case No : Mac. App. 170 of 2009

Ramkali and Others — APPELLANT

Vs

Ashok Kumar and Others — RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0387

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Pooja Goel, for the Appellant; Kanwal Chaudhry, for the Respondent

Judgement

Reva Khetrapal, J.—The sole ground urged by the learned Counsel for the Appellants in this case is that the mode of disbursement of the amount awarded by the Tribunal, i.e., Rs. 7,55,500/- (excluding the interim award granted to the Appellants) is unjustified, for, thereby, the entire awarded amount is kept with the Insurance Company and only the monthly instalment of Rs. 3,987/- per month is being released to the claimants, who are the parents of the deceased, which amount is even less than the interest earned on the award amount. Even otherwise, the monthly instalment of Rs. 3,987/- is not sufficient to meet the expenses of the Appellants.

2. The impugned portion of the award reads as under:

30. Vide judgment dated 04.11.2008 "United India Insurance Co. Ltd. v. Smt. Reeta Devi and Ors." the Hon''ble High Court has been pleased to issue directions that the formula mentioned in this judgment will be followed for disbursement of the award amount by all the Motor Accidents Claim Tribunals. Applying the same formula as laid down in the said judgment the disbursement of award will be as follows:

Since deceased was earning Rs. 11,960/- per month and was contributing about Rs. 7974/- p.m. towards her family i.e. husband who is the present claimant, the share of each of claimant under these circumstances, is assessed as under:

1. Sh. Ramkali Rs. 3,987/- p.m.

2. Sh. Phool Singh Rs. 3,987/- p.m.

31. The present claim petition was filed on 15/01/2007. Now, the claim petition is decided on 12/02/2009. By this date about 25 months would have passed. So, for these 25 months, claimants are entitled to compensation @ Rs. 7,974/- p.m. and accordingly for this period, the amount comes to Rs. 7,974/- x 25 = 1,99,350/-. Out of Rs. 1,99,350/-, Rs. 99,675/- be paid to Petitioner No. 1, Smt. Ramkali, mother of the deceased and Rs. 99,675/- be paid to Petitioner No. 2, Sh. Phool Singh, father of the deceased.

As far as compensation for future period is concerned, i.e. from 1st March, 2009 onwards, Petitioners Smt. Ramkali and Sh. Phool Singh shall be paid Rs. 3,987/- p.m. each till their death.

Both the claimants shall have to furnish "Life Certificate" to the Bajaj Allianz General Insurance Co. Ltd. once in a year i.e. in the month of January every year. These certificates are to be submitted to the Insurance Company in January, 2010 and thereafter every year.

Further, keeping in view the run-away inflation and price rise and the fact that deceased''s salary would have increased with the passage of time, the Claimants shall be entitled to increase in compensation by 25% after every 5 years on his monthly compensation i.e. the claimants shall get 25% increase in the monthly compensation with effect from January 2015 and second increase w.e.f. 2020 and so on, subject to the abovesaid limitation in respect of death of Petitioner No. 1 Smt. Ramkali and Petitioner No. 2, Sh. Phool Singh.

The Insurance Company shall send the respective share of monthly payment to the Petitioners by way of crossed cheques by 10th of every month at the addresses mentioned in the memo of the parties or at any other address to be furnished by the claimants to the Respondents directly.

In case, there is any default on the part of the Respondents in making payment in time, the claimants shall be entitled to interest at the rate of 10% (ten per cent) per annum for the delayed payment.

As far as compensation from the date of filing of the petition i.e. from 15/01/2007 till February, 2009 is concerned, this amount of compensation i.e. Rs. 1,99,350/- as already stated above, shall be deposited by Respondents within a period of two months from today failing which Appellants shall be liable to pay interest @ 10% p.a. from the date of this judgment till realization.

Out of this, Rs. 99,675/- being the share of Petitioner No. 1/Smt. Ramkali be paid to her by way of "Account Payee" cheque in her name. Rs. 99,675/- being the share of Petitioner No. 2/Sh. Phool Singh be paid to him by way of "Account Payee" cheque in his name."

3. The learned Counsel for the Appellants relies upon the decision of this Court in

New India Assurance Co. Ltd. v. Balpreet Kaur, MAC. APP. No. 250/2010 decided on 21.04.2010 to contend that the grant of monthly instalments of the awarded amount by the learned Tribunal is wholly unjustified. In the said case, the learned Tribunal by the impugned award had calculated a monthly loss of income to the legal representatives of the deceased and thereafter calculated loss of dependency till the passing of the award, i.e., for 22 months, and on that basis had directed that the Insurance Company shall pay that amount and shall continue to pay monthly loss of income to the legal heirs of the deceased, viz., to the wife till she re-marries or till death and to the other legal heirs, being the minor children, till they attain majority. In this context, this Court held as follows:

There is no provision under Motor Vehicles Act for fixing compensation on monthly payment basis or like pension as fixed by the learned Tribunal. The compensation has to be awarded to the parties as a lumpsum amount. This Court vide order dated 14th November 2008 in MAC Appeal No. 651 of 2007 had passed a similar order of fixing pension and the matter was taken to the Supreme Court in SLP. The order of fixing of pension was set aside by the Supreme Court and a lumpsum payment was directed to be given to the claimants.

Keeping in view the fact that grant of compensation as monthly payment has not found favour with the Supreme Court, I consider that the Tribunal should fix lumpsum compensation in accordance with law.

In the result, both the appeals are allowed and the matter is remanded back to the Tribunal for adjudicating lumpsum compensation payable to the claimant as per law.

4. Another Bench of this Court in MAC. United India Insurance Co. Ltd. v. Reeta Devi and Ors. APP. No. 651/2007. decided on 04.11.2008, had directed the Insurance Company to send the respective share of monthly payment to the claimants by way of crossed cheques by the 10th of every month at the addresses mentioned in the memo of parties or at any other address to be furnished by the claimants to the Insurance Company on the premise that it would be in the interest of justice to direct the Motor Accident Claims Tribunals to award compensation amount by periodical instalments only and not in lumpsum. Reversing this direction of the Delhi High Court, the Supreme Court in Special Leave to Reeta Devi and Anr. v. United India Insurance Co. Ltd. and Anr. Appeal (Civil) No(s). 15796/2009 held that the grant of monthly instalments of the awarded amount by the learned Tribunal was wholly unjustified.

5. No judgment to the contrary is cited by the learned Counsel for the Respondent No. 3/Insurance Company.

6. There is no dispute to the fact that a total sum of Rs. 8,05,500/- minus Rs. 50,000/-, being the amount of the interim award, with interest at the rate of 7.5% per annum from the date of the filing of the petition on 15.01.2007 till its realization was awarded to the Appellants No. 1 and 2/claimants, which comes to

Rs. 7,55,500/-. There is also no dispute as to the fact that out of this amount, the Appellants No. 1 and 2 have already received a total sum of Rs. 1,99,350/-, out of which Rs. 99,675/- has been paid to the Appellant No. 1 Ramkali, the mother of the deceased and Rs. 99,675/- has been paid to the Appellant No. 2 Phool Singh, the father of the deceased. There is also no dispute as to the fact that till date monthly cheques of Rs. 3,987/- are being received by the Appellants No. 1 and 2 from the Respondent No. 3 - Insurance Company. In this view of the matter, after deducting the aforesaid sum of Rs. 1,99,350/- plus the monthly cheques received by the Appellants till date, the Insurance Company shall deposit the balance amount with the Registrar General of this Court. The Registrar General of this Court shall release to the Appellants No. 1 and 2, sixty per cent of the deposited amount in the ratio of 50:50. The balance forty per cent shall be kept in two Fixed Deposit Receipts in the names of the Appellant No. 1 and the Appellant No. 2 in equal shares for a period of five years and thereafter released to the Appellants No. 1 and 2.

The appeal stands disposed of accordingly.

