(2012) 03 DEL CK 0205

In the Delhi High Court

Case No : Mac. APP. 270 of 2007 and Mac. APP. 288 of 2007

Reena — APPELLANT

Vs

Satatywan and Others
 United India Insurance Co. Ltd. Vs Reena and Others — RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0205

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

Bench : Single Bench

Advocate : Alok Sangwan, in Mac. app. 270/2007 and Mr. Onkar Pandey, for Mr. Pankaj Seth, in Mac. app. 288/2007, for the Appellant; Mohd. Tabish Zia, for R-2 and 3 in Mac. APP. 288/2007, MAC. APP. 270/2007 and Mr. Alok Sangwan, for R-1 in Mac. APP. 288/2007, for the Respondent

Judgement

J.R. Midha

1. The parties have challenged the impugned award whereby the Claims Tribunal has awarded Rs. 11,10,000/- to the claimants. The appellant in MAC.APP. No. 270/2007 seeks enhancement of the award amount whereas the appellant in MAC.APP. No. 288/2007 seeks reduction of the award amount. The accident dated 1st July, 1999 resulted in the death of Anand Singh. The deceased was survived by his widow and parents. The widow of the deceased re-married after two years of the death of the deceased but the second husband also died after sometime. The widow of the deceased filed the claim petition and impleaded the parents as the respondents therein. The deceased was aged 26 years at the time of the accident and was running the business of building material earning Rs. 15,000/- per month. The deceased was also having agricultural income. The deceased was claimed to be earning Rs. 5,000/- per month from the business of agriculture. The Claims Tribunal took the income of the deceased as Rs. 7,500/- per month, added 50% towards future prospects, deducted 1/3rd towards personal expenses and applied the multiplier of 11 to compute the loss of

dependency at Rs. 9,90,000/- . Rs. 25,000/- was awarded towards loss of consortium to the widow, Rs. 10,000/- was awarded to each of the parents for loss of love and affection, Rs. 10,000/- towards funeral expenses and Rs. 65,000/- was awarded towards medical expenditure. The total compensation awarded is Rs. 11,10,000/- . Out of the total compensation awarded, Rs. 4,25,000/- was awarded to the widow of the deceased, Rs. 3,80,000/- was awarded to the father of the deceased and Rs. 3,05,000/- was awarded to the mother of the deceased.

2. The appellant in MAC.APP. No. 270/2007 seeks enhancement of the award amount on the ground that the multiplier be enhanced from 11 to 17 and the entire compensation be given to her.

3. The appellant in MAC.APP. No. 288/2007 seeks reduction of the award amount on the ground that the income and future prospects of the deceased were not proved and, therefore, the minimum wages should be taken into consideration for computing the compensation.

4. The widow of the deceased appeared in the witness box as PW-1 and deposed that her husband was having two building material shops in village Bijwasan and was earning Rs. 15,000/- per month. She further deposed that her husband was also having agricultural income of Rs. 5,000/- per month from growing vegetables.

5. The father of the deceased appeared in the witness box as RW-1 and placed on record the certificate of class 10th and 12th of the deceased. He deposed that his son was running the business of supplying building material in the name of Anand Cement Store at Bijwasan and was also doing agricultural work. RW-1 further deposed that the deceased was earning Rs. 12,000/- to Rs. 15,000/- . The receipt of the cement bags in respect of the business of the deceased were placed on record. The statement of bank accounts of the deceased was also placed on record. The original records relating to the agricultural land were also placed on record.

6. The father of the deceased admitted in his testimony that the deceased was not paying Income Tax. The Income Tax limit at the relevant time was Rs. 50,000/- per annum. The appellant has succeeded in proving that the deceased was a business man carrying on the business of building material in the name of Anand Cement Store and, therefore, the Tribunal was justified in not applying the minimum wages to compute the income of the deceased. However, since the deceased was not paying Income Tax, his business income cannot be presumed to be more than Rs. 50,000/- per annum (Rs. 4,167/- per month). The deceased was also having agricultural income which is exempt from Income Tax. Since the agricultural land is still with the legal heirs of the deceased, only the value of the agricultural work personally done by the deceased can be taken into consideration, which in the opinion of this Court would be Rs. 2,500/- per month. The income of the deceased is taken to be Rs. 6,667/- per month (Rs. 4167/-

from the business and Rs. 2,500/- towards the value of the agricultural work done by the deceased). The claimants are not entitled to future prospects in terms of the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, The Claims Tribunal has applied the multiplier of 11 according to the age of the father of the deceased. The deceased left behind a widow, who got remarried but her second husband also died and, therefore, the multiplier of 17 has to be applied according to the age of the deceased. The remarriage of the widow would not have any bearing as held by this Court in D.T.C. and Others Vs. Meena Kumari and Another, Even otherwise, the second husband also died and the widow is dependent upon the compensation for survival.

7. Taking the income of the deceased as Rs. 6,667/- per month, deducting 1/3rd towards the personal expenses of the deceased and applying the multiplier of 17, the loss of dependency is computed to be Rs. 9,06,712/- (Rs. 6,667 x 12 x 2/3 x 17). The legal heirs of the deceased are entitled to total compensation of Rs. 10,26,712/- as per the break-up given herein below -

Loss of dependency

Rs. 9,06,712/-

Loss of consortium

Rs. 25,000/-

Loss of love and affection

Rs. 20,000/-

Funeral Expenses

Rs. 10,000/-

Medical expenses

Rs. 65,000/-

Total

Rs. 10,26,712

8. For the reasons as aforesaid, MAC.APP. No. 270/2007 is dismissed, MAC.APP. No. 288/2007 is allowed and the award amount is reduced from Rs. 11,10,000/- to Rs. 10,26,712/- along with interest @ 9% per annum from the date of filing of the claim petition till realization. The share of the widow of the deceased shall be 50% in the award amount. The share of the parents of the deceased shall be 25% each in the award amount The award amount along with interest, after adjusting the payment already made, be deposited with UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c Reena.

9. Upon the aforesaid amount being deposited, the UCO Bank is directed to

release 50% of the share of the widow (50% of the 50% of the total award amount) and 50% share of each of the parents of the deceased out of their respective shares (50% of 25% of the total award amount to each of the parents) by transferring the same to their Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% for a period of one year in the name of the widow.

(ii) Fixed deposit in respect of 10% for a period of one year in the name of each of the parents.

(iii) Fixed deposit in respect of 10% for a period of two years in the name of the widow.

(iv) Fixed deposit in respect of 10% for a period of two years in the name of each of the parents.

(v) Fixed deposit in respect of 10% for a period of three years in the name of the widow.

(vi) Fixed deposit in respect of 10% for a period of three years in the name of each of the parents.

(vii) Fixed deposit in respect of 10% for a period of four years in the name of the widow.

(viii) Fixed deposit in respect of 10% for a period of four years in the name of each of the parents.

(ix) Fixed deposit in respect of 10% for a period of five years in the name of the widow.

(x) Fixed deposit in respect of 10% for a period of five years in the name of each of the parents.

10. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiaries.

11. Withdrawal from the aforesaid account shall be permitted to the beneficiaries after due verification and the Bank shall issue photo Identity Card to the beneficiaries to facilitate identity.

12. No cheque book be issued to the beneficiaries without the permission of this Court.

13. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiaries.

14. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

15. Half yearly statement of account be filed by the Bank in this Court.

16. On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

17. The beneficiaries shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

18. The pending application is disposed of.

19. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345). Copy of this judgment be given dasti to counsel for both the parties. The LCR be sent back forthwith.