(2017) 12 DEL CK 0205

In the Delhi High Court

Case No : MAC. Appeal No. . 84 Of 2015

Reliance General Insurance Co. Ltd — APPELLANT

Vs

Rekha Balyan & Ors — RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:
Evidence Act, 1872 — Section 167

Citation : (2017) 12 DEL CK 0205

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

Bench : Single Bench

Advocate : Shantha Devi Raman, Arbaaz Hussain, V.K. Vashistha

Final Decision : Partly Allowed

Judgement

J.R. Midha, J

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.17,55,000/- has been awarded to respondents no.1 and 2.

2. The accident dated 8th March, 2011 resulted in the death of the Robin Balyan. The deceased was going from Rajender Nagar to Noida on his motor cycle No.DL-13SC-6006 and was hit by truck No.HR-58-9864 on Mohan Nagar crossing at Sahibabad. The deceased was crushed under the wheels of the truck and was taken to Narender Mohan Hospital where he was declared brought dead. The deceased was aged 23 years at the time of the accident and was survived by his parents who filed the claim petition before the Claims Tribunal. The deceased had completed BBA (CAM) in 2009 from Guru Gobind Singh Indraprastha University, Delhi and had enrolled himself with IBS, Gurgaon for post-graduate course. The documents relating to his education are on the record of the Claims Tribunal. The deceased was also running a coaching centre earning Rs.10,000/- to 12,000/- per month.

3. The Claims Tribunal took the income of the deceased as Rs.10,000/- per month, added 50% towards future prospects, deducted 50% towards his

personal expenses and applied the multiplier of 18 to compute the loss of dependency at Rs.16,20,000/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.17,55,000/-.

4. Learned counsel for the petitioner urged at the time of the hearing of the appeal that there was no proof of income and therefore, the minimum wages of Rs.8,060/- should be taken into consideration. It is further submitted that the future prospects should not be taken into consideration and the multiplier of 15 be applied according to the age of the mother. It is next submitted that the deceased was contributory negligent and the compensation is liable to be reduced on this account also. It is lastly submitted that the penal interest of 12% be set aside.

5. Learned counsel for respondents no.1 and 2 submits that the compensation awarded to respondents no.1 and 2 is just, fair and reasonable and does not warrant any reduction.

6. The Claims Tribunal has held the driver of the offending vehicle negligent on the basis of the testimony of the eye witness who appeared as PW-2 and the record of the police produced before the Claims Tribunal. No evidence was led to rebut the said evidence. In that view of the matter, there is no infirmity in the finding of negligence of the Claims Tribunal.

7. With respect to the quantum of compensation awarded by the Claims Tribunal, this Court is of the view that the deceased had completed his BBA (CAM) and was pursuing post-graduate course for which his father had taken an education loan of Rs.3,90,000/-. In such a case, it was not proper on the part of the Claims Tribunal to assume his income as Rs.10,000/-. In the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100, 59 persons died in Uphaar tragedy in 1997 and the Supreme Court granted compensation of Rs.10,00,000/- to the victims above 20 years of age by taking their income as Rs.8,333/- per month whereas the minimum wages at the relevant time were less than Rs.2600/-. The findings of the Supreme Court are reproduced hereunder:-

"38. ... It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortuous liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Neelabati Behera (AIR 1993 SC 1960 : 1993 AIR SCW 2366) in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively."

(Emphasis Supplied)"

8. This Court is of the view that considering the educational qualifications of the deceased, the income of the deceased can be taken as Rs.19,000/-. Deducting 50% toward personal expenses and applying the multiplier of 15, the loss of dependency would be Rs.17,10,000/- which is more than the compensation awarded by the Claims Tribunal, meaning thereby that even if the future prospects are not taken into consideration on Rs.19,000/- and the multiplier is reduced from 18 to 15, the compensation amount would be more than the compensation awarded by the Claims Tribunal. Since respondents' no.1 and 2 are not seeking any enhancement, this appeal is put at rest by upholding the compensation awarded by the Claims Tribunal.

9. Applying the principles laid down in Section 167 of the Indian Evidence Act, this Court upholds the compensation awarded by the Claims Tribunal on the grounds mentioned hereinabove. However, the penal interest of 12% imposed by the Claims Tribunal is set aside since the appellant had filed the appeal before this Court.

10. The appeal is partially allowed to the extent of set aside the penal interest of 12%. The appellant has deposited the entire award amount with UCO Bank, Karkardooma Courts Branch.

11. List for disbursement of the amount on 23rd December, 2016.

12. Respondents no.1 and 2 shall remain present in Court on the next date of hearing.

13. UCO Bank, Karkardooma Courts Branch shall confirm the amount lying deposit with it. UCO Bank, Karkardooma Courts Branch shall furnish the relevant information to counsel for respondents no.1 and 2.

14. Copy of this judgment be given dasti to the learned counsels of the parties.