(2016) 03 DEL CK 0144

In the Delhi High Court

Case No : Mac. App. 679 of 2012

Reliance General Insurance Co. Ltd. APPELLANT

Vs

Roshan Lal RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Citation : (2016) 1 RajdhaniLR 637

Hon'ble Judges : R.K.Gauba, J.

Bench : Single Bench

Advocate : Mr. P. Acharya, Advocate, for the Appellant; Mr. A.S. Rajput, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R.K.Gauba, J. (Oral) - Anil @ Manju, a youth aged 22 years, was helping the driver of motor vehicle described as HR 14B 8772 in reversing when he was crushed against the wall on the rear side and died as a result of injuries suffered on 27.05.2008. He was a bachelor and his parents (first to second respondents herein) brought accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) on 30.08.2008 which was registered as petition No.564/2008. The driver, owner and insurer (the appellant) of the offending vehicle were impleaded as respondents in the said proceedings. The tribunal held inquiry and on that basis passed judgment on 07.04.2012 returning a finding that the accident and death had occurred due to negligence on the part of the driver of the said vehicle. It assessed compensation in the sum of Rs. 6,38,600/- and awarded it with interest from the date of filing of the petition directing the appellant to satisfy the award, calculating it thus :

SL. No.

On Account of

Amount (Rs.)

1.

Loss of dependency

Rs.5,88,600/-

2.

Loss of Consortium

Rs. 10,000/-

3.

Loss of Love & affection @ Rs.10,000/-(each petitioner)

Rs.20,000/-

4.

Loss of Estate

Rs. 10,000/-

5.

Towards funeral expenses

Rs. 10,000/-

Total

Rs.6,38,600/-

2. By appeal at hand, the insurer questions the finding of negligence submitting that it was the deceased who was himself negligent and also raising the issue of calculation of loss of dependency on the ground the future prospects to the extent of 50% were wrongly added even though the income was notionally assessed on the basis of minimum wages and further that the multiplier of 18 was adopted on the basis of age of the deceased which was inappropriate. Per contra, the claimants submit that the award under the non pecuniary heads of damages is grossly inadequate.

3. The contention of the insurance company on the question of negligence cannot be accepted in the face of clear evidence showing that the deceased was helping the driver of the offending vehicle in reversing it, at which stage he was crushed to death against the rear wall. In reversing the vehicle, onus on the driver of the vehicle to be careful was even more, particularly when he was aware that the person assisting him was sandwiched between the vehicle and the wall on the rear side.

4. On the question of compensation, however, contentions of both sides are found to be correct and therefore, the issue has to be revisited.

5. In absence of formal proof of income, the tribunal correctly adopted the minimum wages of Rs. 3,633/- per month as the notional income. But it fell into error by adding future prospects and in applying the multiplier of 18.

6. In the case reported as Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, Supreme Court, inter-alia, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon?ble Judges in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors. v. Rajbir & Ors., (2013) 9 SCC 54, the issue was later referred to a larger bench, inter-alia, by order dated 02.07.2014 in National Insurance Company Ltd. v. Pushpa & Ors., (2015) 9 SCC 166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (Sunil Kumar v. Pyar Mohd.), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

8. It is well settled that the multiplier is to be adopted in such cases on the basis of age of the deceased or of the claimants, whichever is higher. [G.M. Kerela SRTC v. Susamma Thomas (1994) 2 SCC 176; U.P.S.R.T.C. v. Trilok Chandra (1996) 4 SCC 362; New India Assurance Co. Ltd. v. Charlie AIR 2005 SC 2157; New India Assurance Co. Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1; Ramesh Singh & Anr. v. Satbir Singh & Anr. (2008) 2 SCC 667; National Insurance Company Ltd. v. Shyam Singh & Ors. (2011) 7 SCC 65; Ashwinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma & Anr. (2015) 2 SCC 180]

9. The material on record shows that the age of the father (first claimant) at the relevant point of time was 53 while that of the mother (second claimant) was 46 years. The average age being 49 years, the multiplier of 13 has to be applied. Since the deceased was a bachelor, 50% has to be deducted towards personal and living expenses. Thus, the monthly loss of dependency comes to (3,633 ? 2) Rs. 1,817/- per month. On the multiplier of 13, total loss of dependency comes to (1,817 x 12 x 13) Rs. 2,83,452/- rounded off to Rs. 2,84,000/-.

10. Following the view taken in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala v. Gangalakshmamma (2015) 9 SCC 150, compensation in the sum of Rs. 1 lakh on account of loss of love & affection Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to (2,84,000 + 1,50,000) Rs. 4,34,000/-.

11. It is noted that the tribunal had granted only 7.5% as the rate of interest.

Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 Oriental Insurance Co. Ltd. v. Sangeeta Devi & Ors.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

12. By order dated 06.07.2012, the insurer had been directed to deposit entire awarded amount with UCO Bank, Delhi High Court branch within the period specified whereupon it was directed to be held in fixed deposit for a period of six months to be renewed from time to time. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the same from out of the amount deposited, refunding the excess, if any, with statutory deposit, if made, to the insurance company. Conversely, if more amount is required to be paid, the insurer shall deposit the same with the tribunal within 30 days of today.

13. The appeal is disposed of in above terms.