(2012) 05 DEL CK 0113

In the Delhi High Court

Case No : MAC. App. 1112 of 2011 and MAC. App. 1141 of 2011

Reshma Sachdeva and Others — APPELLANT

Vs

Jaswant Singh and Others
 New India Assurance Co. Ltd. Vs Reshma Sachdeva and Others — RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0113

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

Bench : Single Bench

Advocate : Ashok Popli, in MAC. app. 1112/2011 and Mr. Jitendra Kumar and Mr. Manish Maini and Mr. Sameer Nandwani, in MAC. app. 1141/2011, for the Appellant; Jitendra Kumar, Advocate and Mr. Manish Maini, Advocate and Mr. Sameer Nandwani, Advocate for R-9, in MAC. App. 1112/2011 and Mr. Ashok Popli, Advocate, in MAC. App. 1141/2011, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These two Cross Appeals arise out of a judgment dated 13th September, 2011 whereby the compensation of Rs. 9,80,000/- was awarded for the death of deceased Sh. Manohar Sachdeva who died in an accident which occurred on 13th June, 2008. In MAC APP No. 1112/2011 the Appellants who were the Claimants before the Claims Tribunal are seeking enhancement of compensation, whereas in MAC APP No. 1141/2011 the New India Assurance Company who was Respondent No.3 before the Claims Tribunal seeks reduction of compensation.

2. Since the finding on question of negligence is not challenged by the Respondents, I am not expected to go into that finding.

3. It is urged by the learned counsel for the Appellant that the Appellant proved the Income Tax Returns for the Assessment Years 2005-2006, 2006-2007, 2007-2008 as Ex. PW 1/3 (Colly). The Claims Tribunal erred in rejecting the same merely on the ground that there was some discrepancy in the PAN number

mentioned in the ITRs. It is also stated that the compensation awarded towards loss of love and affection is on the lower side.

4. On the other hand, it is urged by the learned counsel for the Respondent New India Assurance Company that the Claims Tribunal rightly declined to believe the ITRs as there was discrepancy in the PAN number. The Claims Tribunal erred in making addition of 50% on account of inflation. It is stated that the inflation is built in the multiplier. The compensation awarded of Rs. 9,80,000/- argues the ld. Counsel is liable to be reduced.

5. I have gone through the photocopies of the Income Tax Returns Ex. PW 1/3 (Colly). Originals had been produced by the learned counsel for the Appellant at the time of the hearing. Apart from the three Assessment Years, an acknowledgment of filing Income Tax Return for the Assessment Year 2007-2008 has also been shown.

6. It is true that there is some discrepancy in the PAN Number mentioned in the Income Tax Return for the Assessment Year 2007-2008 and also in the earlier Assessment Years. It is important to note that on the Income Tax Returns GIR No/Pan Number is mentioned and therefore on some of the Returns it could be GIR Number on others it could be PAN Number. It is also noticed that sometimes more than one PAN Number is issued by the Income Tax Department on successive applications due to non-receipt of the PAN Number on an earlier application.

7. PW 1 Smt. Reshma Sachdeva, (the deceased''s widow) testified that the deceased was earning Rs.13,000/- per month. She was unable to produce any documentary evidence in support of the income of Rs.13,000/- per month, but there was enough documentary evidence to show that the deceased''s income was of Rs. 1,01,620/- for the Assessment Year 2005-2006, Rs. 99,580/- for the assessment year 2006-2007 and Rs. 1,26,220/- for the Assessment Year 2007-2008. I do not see any conceivable reason to disbelieve the income for the three successive years placed on record by the Claimant.

8. A perusal of the Income Tax Returns for the three years reveal that the deceased''s income was fluctuating. In the circumstances, I would take the average income of three years to compute the loss of dependency. Average income comes to Rs. 1,09,140/-(Rs. 1,01,620/- + Rs. 99,580/- + Rs. 1,26,220 / 3= Rs. 1,09,140). Since the deceased''s income was fluctuating, the Appellants would not be entitled to any addition on account of future prospects. Thus loss of dependency comes to Rs. 11,45,970 (Rs. 1,09,140 X 3/4 X 14)

9. The Claims Tribunal awarded a sum of Rs. 10,000/- towards love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted Rs. 25,000/- (in total to all the claimants) under the head of

loss of love and affection. Thus, I would enhance the compensation under this head to Rs. 25,000/-.

10. On adding the notional sum of Rs. 50,000/- i.e. Rs. 25,000/- for loss of love and affection, Rs. 10,000/- for loss of consortium, Rs. 5,000/- for funeral expenses and Rs. 10,000/- for loss to estate, the overall compensation thus comes to Rs. 11,95,970/-.

11. The enhanced compensation of Rs. 2,15,970/- shall carry interest @ 7.5% from the date of filing of the petition till date of deposit with UCO Bank, Delhi High Court Branch in the name of Smt. Reshma Sachdeva, the deceased''s widow and the First Appellant in MAC 1112/2011. The enhanced compensation shall enure for the benefit of the First Appellant.

12. In the result MAC APP 1112/2011 is allowed in the above terms.

13. MAC Appeal No. 1141/2011 is dismissed.

14. The Appellant Insurance Company shall be entitled to refund of the statutory amount of Rs. 25,000/-. The amount in MAC APP 1141/2011 shall be released in favour of Respondents No. 1 to 4 in terms of the order passed by the Claims Tribunal.