(2010) 11 DEL CK 0123

In the Delhi High Court

Case No : MAC. Application 104 of 2010

Rina Devi (Decd. Through Legal Heirs) and Others — APPELLANT

Vs

Bijender Singh and Others — RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0123

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Manoj R. Sinha, for the Respondent

Judgement

Reva Khetrapal, J.—This appeal is directed against the Award of the Motor Accident Claims Tribunal dated 1st April, 2009 whereunder the Tribunal awarded a sum of ` 7,90,100/- with interest thereon to the Appellants against the claimed amount of ` 20 lakhs.

2. The facts emerging from the record succinctly stated are that on 12th January, 2006 at about 12.40 a.m., Bunty Khatri (hereinafter referred to as ''the deceased'') aged 22 years was travelling in a Maruti Esteem car bearing registration No. DL-6CH-1307 driven by one Bijender. When the said car reached the Centur Hotel, Samalkha Chowk, it was hit by a truck/canter bearing registration No. HR-45-5279 from the back side as a result of which Bunty Khatri sustained fatal injuries, resulting in the registration of FIR No. 04/2008 at Police Station Mahipalpur against the driver of the said truck, the Respondent No. 1 herein. The deceased was survived by his wife, the Appellant No. 1 herein, who died during the pendency of the claim petition, a minor son who was nine months old at the time of his death (the Appellant No. 2) and his parents, the Appellants No. 3 and 4 herein. By its award dated 1st April, 2009, the Motor Accident Claims Tribunal awarded a sum of ` 7,90,100/- along with interest @ 7% per annum from the date of the filing of the petition till the realization of the amount. Aggrieved by the amount awarded by the Tribunal, the Appellants have preferred the present appeal for enhancement of the award amount.

3. Although a number of grounds were taken up in appeal, at the time of arguments Sh. O.P. Mannie, the learned Counsel for the Appellants raised only the following two contentions:

(i) The Tribunal erred in applying the multiplier at 17 to the multiplicand of ` 43,824/- (assessed to be the annual income of the deceased) whereas even as per the recent judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier of 18 is applicable to the age group of 21 years to 25 years.

(ii)The Tribunal erred in deducting 1/3rd towards the personal expenses of the deceased, whereas the deceased being the sole bread-winner of a family comprising of four other members could not have been spending more than 1/4th of the amount earned by him towards his own expenses.

4. Mr. Manoj R. Sinha, the learned Counsel for the Respondent No. 3, on the other hand, supported the judgment of the learned Tribunal and contended that the Tribunal had not erred in adopting the multiplier of 17 since the said multiplier was the multiplier given in the Second Schedule of the Motor Vehicles Act, 1988. The learned Counsel also contended that the deduction of only 1/4th (one-fourth) of the amount earned by the deceased towards his personal expenses would not be justified. He contended that 1/3rd (one-third) deduction had in fact acquired statutory recognition under the Second Schedule of the Act.

5. Having heard the learned Counsel for the parties and gone through the records, I am of the view that keeping in view the fact that the deceased was 22 years of age as per his matriculation certificate, the Appellants are justified in their grievance that the multiplier of 18 should have been applied by the learned Tribunal to the annual loss of dependency of the Appellants. Likewise, the Appellants are justified in contending that the Tribunal, keeping in view the fact that the deceased had four dependant members, ought to have deducted 1/4th (one-fourth) and not 1/3rd (one-third) from the income of the deceased towards his personal and living expenses in consonance with the judgment in Sarla Verma''s case (supra).

6. Adopting a multiplier of 18 as laid down in the fourth column of the Chart contained in paragraph 19 of the decision rendered by the Supreme Court in the case of Sarla Verma (supra) and deducting 1/4th (one-fourth) from the annual income of the deceased, the Appellants become entitled to the enhanced compensation of ` 9,00,000/- i.e. ` 65,700 (income per annum) minus ` 16425/- (one-fourth deduction) = ` 49275/-, (which is rounded off to ` 50,000/-) multiplied by 18. As regards the non-pecuniary damages, the Tribunal has already awarded a sum of ` 45,000/- towards loss of estate, funeral expenses and loss of love and affection and no reason has been cited for varying the same.

7. The award is accordingly modified to the above extent. The interest on the enhanced amount of ` 1,55,000/- shall be paid by the Respondent No. 3 at the

same rate i.e. 7.5 % per annum from the date of the filing of the petition till the realization.

8. The increase in compensation awarded by this Court shall enure exclusively to the benefit of the minor child of the deceased, who has lost both his parents. The enhanced amount shall be kept in a Fixed Deposit Receipt with a nationalized bank with a condition that no loan or advance shall be made against the said Fixed Deposit Receipt. The Appellant No. 1, Vansh Kumar Khatri, shall be entitled to the release of the said amount on attaining the age of majority. The Appellants No. 3 and 4 shall be entitled to withdraw the interest thereon towards the maintenance and up-bringing of the minor child.

9. The appeal stands disposed of in the above terms.