(2012) 08 DEL CK 0142

In the Delhi High Court

Case No : MAC Appeal No. 176 of 2004

Saheedan and Others APPELLANT

Vs

M/S Ahuja Goods Carriers Pvt. Ltd. and Others RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0142

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

Bench : Single Bench

Advocate : J.S. Kanwar, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 3,13,320/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Abdul Hakim, a carpenter, aged 45 years, who died in a motor vehicle accident which occurred on 15.06.1998. The finding on negligence and liability is not challenged by filing any Appeal by the driver, owner or the Insurer. Thus, the same has attained finality.

2. My task is simply to go into the question whether the compensation awarded needs any enhancement.

3. In the Claim Petition filed by the Appellants, it was averred that the deceased was working as a carpenter and was earning Rs. 140/- per day. In the absence of any cogent evidence with regard to the deceased''s income, the Claims Tribunal took the Minimum Wages of a skilled worker (as the deceased was a carpenter), deducted one-third towards the personal and living expenses and applied the multiplier of ''15'' to compute the loss of dependency as Rs. 2,83,320/-.

4. The following contentions are raised on behalf of the Appellants:-

(i) No compensation was awarded towards the treatment.

(ii) The Claims Tribunal erred in calculating the deceased''s income as per the Minimum Wages and making deduction of one-third towards the personal and living expenses. It is urged that considering the large family, the deduction towards personal and living expenses should have been one-fifth.

(iii) No addition towards future prospects was made while computing the loss of dependency.

5. It goes without saying that the Appellant were entitled to be compensated in respect of any expenditure towards the treatment of the deceased. In the grounds of Appeal, it was stated that a sum of Rs. 35,000/- was spent towards the medical treatment given to the deceased before he succumbed to the injuries. Strangely, there was no averment in the Claim Petition that the deceased had received any medical treatment till he died. The Appellants produced Smt. Saheedan, the deceased''s widow to prove the loss suffered by them. She was completely silent if any amount was spent on the treatment. It is true that some photocopies of the cash memos are available on the Trial Court record. The same were not even referred to by the Appellants. It is also not the Appellants'' case that they could not preserve the originals or the originals were misplaced. In the absence of any evidence with regard to the expenditure incurred on the deceased''s treatment, the Appellants are not entitled to any compensation towards the amount alleged to be spent on treatment.

6. PW-3 Smt. Saheedan, the deceased''s widow''s testimony that the deceased was working as a carpenter was not challenged in cross-examination. The extent of his (the deceased) income as claimed by PW-3 to be Rs. 100/- to Rs. 150/- per day was challenged by the Respondent Insurance Company by giving a suggestion that the deceased was not having such income. Admittedly, the Appellants did not produce any documentary evidence with regard to the deceased''s income. Perhaps there could be none as the deceased was working as a carpenter.

7. In the circumstances, considering that this accident took place in the year 1998, I would make a guess work and assume the income of a carpenter (in those days) to be Rs. 100/- per day.

8. Admittedly, there were eight dependents on the deceased Abdul Hakim. Thus, deduction towards personal and living expenses has to be one-fifth as against one-third made by the Claims Tribunal.

9. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559 and held that as per Santosh Devi even in the absence of any evidence as to future prospects an

increase of 30% in the income has to be provided when the victim was having fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma''s judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

10. Thus, there would be an addition of 30% in the deceased''s income to compute the loss of dependency.

11. On applying the same, the loss of dependency thus comes to Rs. 5,24,160/-

(3,000/- x 12 + 30% x 4/5 x 14).

12. In addition, the Appellants are awarded compensation of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards loss to estate, loss of consortium and funeral expenses.

13. The overall compensation thus comes to Rs. 5,79,160/-.

14. The compensation is thus enhanced from Rs. 3,13,320/- to Rs. 5,79,160/-.

15. The enhanced compensation of Rs. 2,65,840/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

16. The accident took place almost 14 years ago. The enhanced compensation shall enure for the benefit of First Appellant.

17. Respondent No. 3 Oriental Insurance Company Limited is directed to deposit the enhanced compensation along with interest in the name of the First Appellant with UCO Bank, Delhi High Court, New Delhi within six weeks.

18. 60% of the enhanced compensation shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest 40% shall be released on deposit.

19. The Appeal is allowed in above terms. Pending Applications stands disposed of.