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(2009) 02 DEL CK 0132

In the Delhi High Court

Case No : MAC. APP. 257 of 2004 and MAC. APP. 282 of 2004

Santosh Kumar Abrol and Another — APPELLANT

Vs

New India Assurance Co. Ltd. and Others
 New India Assurance Co. Ltd. Vs Santosh Kumar Abrol and Others — RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0132

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

Bench : Single Bench

Advocate : Navneet Goyal, in MAC.app. 257/2004 and Pankaj Seth, in MAC.app. 282/200, for the Appellant; Pankaj Seth in MAC.APP. 257/2004 and Navneet Goyal in MAC.APP. 282/2004, for the Respondent

Judgement

J.R. Midha, J.—These appeals arise out of the award dated 10th February, 2004 passed by the Learned Tribunal whereby compensation of Rs. 5,41,000/- has been awarded. Both the parties have challenged the award.

2. MAC. APP. No. 282/2004 has been filed by New India Assurance Company Limited, hereinafter referred to as "Insurance Company" seeking reduction of the award amount.

3. MAC.APP. No. 257/2004 has been filed by the claimants seeking enhancement of the award.

4. On 10th October, 2000, the deceased Mr. Arun Abrol was going on his motor cycle at Najafgarh Road when he was hit by the Tempo bearing No. DL IL A-6777 resulting in grievous injuries which resulted in his death.

5. The deceased was aged 24 years at the time of his death and had a business of assembly, sale, repair and service of computers earning Rs. 83,433/- per annum at the time of his death.

6. The deceased was survived by his parents aged 62 years and 57 years at the

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time of the accident. The parents were dependent on the deceased. The parents of the deceased filed the claim petition before the Learned Tribunal claiming the compensation of Rs. 20 Lakh.

7. At the trial, the father of the deceased appeared as PW-5. He deposed that the deceased was carrying on the computer business since 1996. He further deposed that the deceased was Income Tax payee. The Income Tax returns along with statement of account and balance sheet for the years 1997-1998, 1998-1999, 1999-2000 and 2000-2001 were proved by PW-5 as Ex.PW5/1 to Ex.PW5/4. The deceased was carrying on the business in the name of ''Cybertronics System''. Some of the purchase bills were produced and marked as mark ''A1'' to ''A5''. The deceased got the training in computers from his elder brother Vikram Abrol who was initially doing the business of computers in Delhi. Later on the deceased''s brother, Vikram Abrol left for USA whereupon the deceased was looking after the entire business. PW - 5 further deposed that if the deceased would have survived in the accident, his monthly income would have risen to Rs. 30,000/- per month.

8. The Learned Tribunal computed the compensation by taking the Income Tax return, Ex.Pw5/1 for the assessment year 2000-2001. The income of the deceased was taken at Rs. 6,000/- per month. 1/3rd was deducted towards the personal expenses of the deceased. The future prospects were computed by taking the average of Rs. 6,000/- and double of it, i.e., Rs. 12,000/-. Multiplier of 8 was applied considering the age of the mother which was 57 years at the time of the accident. The compensation was computed at Rs. 5,76,000/-. Rs. 15,000/- were awarded towards funeral expenses, making the total compensation of Rs. 5,91,000/-.

9. The claimants are seeking the enhancement of the award on the following two grounds:

(i) Income of the deceased at the time of his death as per the Income Tax return, Ex.PW5/1 for the assessment year 2000-2001 was Rs. 83,433/- per annum which should have been taken for the purpose of computation of compensation whereas the Learned Tribunal has taken the income to be Rs. 72,000/- per annum.

(ii) No compensation has been awarded towards loss of love and affection and loss of estate.

10. The Insurance Company has challenged the award of the Learned Tribunal on two grounds:

(i) The dependency of the legal representatives should have been taken as half as the deceased was unmarried.

(ii) Future prospects of the deceased should not have been taken because there was no evidence to prove the future prospects.

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11. The counsel for the claimants refer to and rely upon the judgments of United India Insurance Co. Ltd. v. Sulochana III (2007) ACC 50 (DB) and New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, . Learned Counsel for insurance company refers to the recent judgment of the Apex Court in the case of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, .

12. With respect to the contention of the claimant that the income of the deceased should have been taken at Rs. 83,433/- as per the Income Tax return, Ex.PW5/1, it is noted that Rs. 83,433/- is the gross income over expenditure out of which Rs. 11,353/- was deducted towards interest and dividend and the net income is Rs. 72,080/-. The interest and dividend on the deposits would have continued even after the death of the deceased and, therefore, the Learned Tribunal was right in taking the annual income of the deceased at Rs. 72,000/- as per the Income Tax return, Ex.PW5/1. The contention raised by the claimant in this regard is, therefore, rejected.

13. With respect to the second contention of the claimants that the Learned Tribunal has not awarded any compensation towards loss of love and affection, it is well settled that compensation computed on the basis of multiplier is towards pecuniary damages suffered due to the death and the non-pecuniary damages are awarded for loss of love and affection. The learned Tribunal has not awarded any amount for loss of love and affection. Following the recent judgments, where the Courts have awarded Rs. 50,000/- for loss of love and affection, I award the compensation of Rs. 50,000/- towards loss of love and affection.

14. With respect to the contention of the Insurance Company that future prospects should not be taken into consideration, I find that there is sufficient evidence on record to grant the future prospects. The Income Tax returns for the last four years were placed on record which show gradual increase in the income. Secondly, the father of the deceased came into the witness box and deposed that the income of the deceased was gradually increasing and would have increased to Rs. 30,000/- per month. Thirdly, the deceased was into the business of computers and the computer business all over the world boomed more than other businesses and, therefore, the presumption taken by the Learned Tribunal that it would double in the life span of the deceased is fair and reasonable.

15. With respect to the other contention of the Insurance Company that the personal expenses of the deceased should have been deducted @ 1/2, I am of the view that in this case the parents were fully dependent upon the deceased. The decision of the Learned Tribunal for taking the 1/3rd deduction towards personal expenses is in consonance with the judgment of the Apex Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, which is a three Judges Bench decision.

16. In view of the above, the MAC.APP. No. 282/2004 filed by the Insurance Company is dismissed. MAC.APP. No. 257/2004 is partially allowed by awarding Rs. 50,000/- towards loss of love and affection to the appellants. The claimants

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are also entitled to the interest @ 7.5% from the date of the petition till the payment of the enhanced amount. The enhanced amount along with interest be released to the claimants in equal shares.

17. The Insurance Company is directed to deposit the enhanced amount of Rs. 50,000/- along with interest @ 7.5% with the Learned Tribunal within 4 weeks.

18. It is noted that the insurance company deposited Rs. 5,00,000/- in this Court in MAC.APP. No. 282/2004. The Registrar General is directed to transfer this amount to the Learned Tribunal within four weeks. The Learned Tribunal shall release the said amount in terms of the award to the claimants.

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