

(2023) 08 DEL CK 0212

In the Delhi High Court

Case No : MAC.APP. No. 493 Of 2018, Civil Miscellaneous Application No. 21317 Of 2018, 21318 Of 2018

Sapna & Ors

APPELLANT

Vs

Royal Sundaram Alliance Insurance Co Ltd & Ors

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0212

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Anshuman Bal, Pankaj Gupta, Suman Bagga

Final Decision : Disposed Of

Judgement

Navin Chawla, J

1. This appeal has been filed by the appellants challenging the Award dated 19.7.2017 passed by the Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the learned 'Tribunal') in MACT No.14369/2015 titled Sapna & Ors. v. Mohd. Azad & Ors..

2. The appellants were the Claimants before the learned Tribunal and are aggrieved of the compensation awarded in their favour.

3. The learned counsel for the appellants submits that the learned Tribunal has erred in deducting 1/3rd from the income of the deceased- Late Sh.Karamveer, who unfortunately died in the accident in question, towards his personal expenses. He submits that at the time of the death, the deceased had left behind three legal heirs, that is, the parents and the wife. The wife of the deceased at that time was pregnant, and later a baby girl was born on 25.06.2012. Unfortunately, the father of the deceased died during the pendency of the Claim Petition and therefore, he was deleted from the array of parties. Instead, the appellant no.3, who was born later, was added as a claimant. He submits that as there were four family members, including the unborn child, who were

dependent on the deceased at the time of his death, only 1/4th of his income could have been deducted towards his personal expenses.

4. On the other hand, the learned counsel for the respondent no.1 submits that leave alone any proof, there was not even an averment by the Claimants before the learned Tribunal, of the father of the deceased, Late Sh.Ghanshyam, being financially dependent on the deceased. He submits that in absence thereof, the learned Tribunal has rightly not taken the father of the deceased as financially dependent on the deceased, and deducted 1/3rd of the income of the deceased towards his personal expenses.

5. I have considered the submissions made by the learned counsels for the parties.

6. The learned counsel for the appellants is unable to point out any averment, leave alone any evidence, before the learned Tribunal which would show that the father of the deceased was financially dependent on the deceased. In absence thereof, the father of the deceased cannot be treated as financially dependent on the deceased, and in terms of the judgment of the Supreme Court in *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, 1/3rd income of the deceased has rightly been deducted towards his personal expenses. I, therefore, find no merit in this challenge to the Impugned Award.

7. The next challenge of the appellants to the Impugned Award is on the learned Tribunal assessing the loss of dependency by taking the minimum wages notified by the State of Uttar Pradesh for unskilled worker for determining the income of the deceased.

8. The learned counsel for the appellant submits that the deceased was working for gain in private service in Delhi. This was so stated by the appellant no.1 in her affidavit of evidence before the learned Tribunal. He further submits that even the Election ID-card of the appellant no.1 reflects the residential address of the appellant no.1 at Delhi. He submits that this evidence was ignored by the learned Tribunal. He submits that, therefore, the minimum wages as notified by the Government of NCT of Delhi should have been applied for determining the loss of dependency.

9. On the other hand, the learned counsel for the respondent no.1 submits that there was no proof led by the claimants/appellants herein on their claim of the deceased working for gain in Delhi. He submits that even the Election I-card of the deceased and the Aadhar Card of the mother of the deceased, that were placed on record by the appellants before the learned Tribunal, bore the address of State of Uttar Pradesh. He submits that, therefore, the adoption of minimum wages notified by the State of Uttar Pradesh for determining the income of the deceased cannot be faulted.

10. I have considered the submissions made by the learned counsels for the parties.

11. As recorded by the learned Tribunal in its Impugned Award, no document was produced by the appellants before the learned Tribunal to show that the deceased was working for gain in Delhi at the time of the accident. There was also no proof in form of any ownership/rent agreement or any other Government document that would show that the deceased, at the time of his death, was a resident of Delhi. Election ID-Card of the appellant no. 1, in absence of any other evidence of the residence of the deceased in Delhi, cannot suffice to determine the residence of the deceased at Delhi. On the other hand, there were documents before the learned Tribunal which showed the residence of the deceased in the State of Uttar Pradesh.

12. In view of the above, no fault can be found with the learned Tribunal in determining the income of the deceased based on the minimum wages notified by the State of Uttar Pradesh. The challenge in this regard is rejected.

13. The last challenge of the appellants to the Impugned Award is on the learned Tribunal not awarding any amount towards the future prospects.

14. The learned counsel for the appellants submits that in terms of the judgment of the Supreme Court in National Insurance Company Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680, for determining the loss of dependency, future prospects of 40% of the income determined for the deceased should have been added.

15. I find merit in the said submission of the learned counsel for the appellants.

16. The deceased was aged 23 years at the time of the accident/his death. In terms of the judgment of the Supreme Court in Pranay Sethi (supra), 40% of the income should have been added towards future prospects for determining the loss of dependency.

17. In view of the above, the compensation amount shall stand enhanced towards the loss of dependency, as under:

"Rs.4,303/- + (40% of 4,303/-) = Rs.6,024.20 (round Rs.6,025/-)

Rs. 6,025/- x 12 x 18 = Rs.13,01,400/-.

Deduction of 1/3rd towards personal expenses:

Rs. 13,01,400 - (1/3rd of Rs. 13,01,400/- = 4,33,800/- = Rs. 8,67,600/-"

18. Compensation amount towards loss of dependency is therefore, determined as Rs.8,67,600/-. The Award shall stand modified to the above extent.

19. The learned counsel for the respondent no.1 submits that the compensation amount as determined by the learned Tribunal already stands deposited. The learned counsel for the appellants submits that the compensation deposited is being disbursed in accordance with Schedule prescribed by the learned Tribunal in the Impugned Award.

20. The respondent no.1 shall now deposit the enhanced compensation, that is,

Rs.5,57,784/-, along with interest at the rate of 9% per annum with effect from the date of filing of the claim petition before the learned Tribunal till the date of its deposit, within a period of six weeks from today. On such deposit, the learned Tribunal shall release the earlier awarded amount as also the enhanced amount to the Claimants in accordance with the schedule of disbursal prescribed by the learned Tribunal in the Impugned Award.

21. I must herein note that in terms of the Impugned Award, the respondent no.1 has been granted a right to recover the compensation paid to the appellants from the respondent nos.2 and 3, the driver and the owner of the offending vehicle, respectively. The respondent no.2 was duly served with the notice issued on this appeal, as recorded in the order dated 26.09.2018. The respondent no.3 was served through publication, as recorded in the order dated 01.12.2020. In spite of service, none has appeared for the said respondents. As there is no challenge to the right of the respondent no.1 to recover compensation amount from the respondent nos.2 and 3, the same shall enure to the benefit of the respondent no. 1 also for the enhanced amount.

22. The appeal along with the pending applications is disposed of in the above terms. There shall be no order as to costs.