(2011) 11 DEL CK 0321

In the Delhi High Court

Case No : MAC App. 121 of 2011 and 173 of 2011

Sarabjeet Kaur and Others APPELLANT

Vs

Om Prakash Chandela and Another
 New India Assurance Company Ltd. Vs Sarabjeet Kaur and Others RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 11 DEL CK 0321

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

Bench : Single Bench

Advocate : Navneet Goyal in MAC app. 121/2011 and Mr. Abhishek Kumar in MAC app. 173/2011, for the Appellant; Abhishek Kumar Advocate for R-2 in MAC APP. 121/2011 and Mr. Navneet Goyal, Advocate in MAC APP. 173/2011, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—These two cross appeals arise out of an award dated 30.09.2010 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby the compensation of Rs.19,16,976/- along with interest @ 7.5% per annum was awarded by the Tribunal in respect of death of Kawaljeet Singh who was aged about 46 years on the date of the accident on 29.08.2007.

2. In MAC APP. No.121/2011 the Appellants'' grievance is that the deceased''s actual income was not taken into consideration and compensation awarded towards the conventional head of loss of love and affection of Rs.10,000/- was on the lower side. It was averred that the future prospects were given to the extent of 30% only which was also on the lower side considering that the deceased was employed as an Account Superintendent in M/s. National Aviation Company of India Limited.

3. In the cross appeal (MAC APP.173/2011) preferred by the Insurance Company it is averred that neither any of the witness nor the IO was examined and mere

filing of the record of the criminal case was not sufficient to prove rashness and negligence on the part of the driver Om Prakash Chandela (Respondent No.4) and thus, there is no liability on the part of the Respondent Om Prakash Chandela (owner) and on the Appellant New India Insurance Company Limited, the insurer of the vehicle.

4. Apart from the fact that along with the Accident Information Report, the attested copies of the FIR No.342/2007, Police Station Prasad Nagar, site plan showing the manner in which the accident took place, mechanical inspection report showing scratch marks on the front mudguard, MLC and post mortem report which prima facie showed negligence on the part of the Respondent Om Prakash Chandela, it was averred in Para 27 of the Petition that on 29.08.2007 at about 7:25 PM while Kawaljeet Singh (the deceased) was crossing the road at Dhobi Ghat WEA Karol Bagh, Delhi a motor cycle No.DL-6SZ-0576 being driven by the Respondent Om Prakash Chandela in a rash and negligent manner hit the deceased with great force. As a result of this, he fell down on the road, suffered grievous injuries. He was removed to RML hospital where he succumbed to the injuries on the same day at 11:10 PM. These averments were not denied in the written statement/reply filed by the Respondent Om Prakash Chandela (the driver of the offending vehicle) and by the Insurance Company either specifically or by necessary implication. Although, in a petition u/s 166 of the Motor Vehicles Act (M.V. Act) it is expected of the Claimants to prove rashness or negligence on the part of the driver of the vehicle to claim damages, yet, in view of the documents placed on record as stated earlier and the implied admission by not controverting the facts of negligence as stated in the petition, specifically, the negligence on the part of the driver of the offending vehicle was established.

5. Turning to the amount of compensation, the Tribunal fell in a grave error in taking the net salary of the deceased as Rs.13,957/- per month. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the actual income of the deceased less income tax is the starting point of calculation of compensation. Though the certificate Ex.PW-1/11 showing the deceased''s salary to be Rs.4,05,124/- was vague, yet the salary slip for the month of August clearly showed that the deceased had a gross salary of Rs.30,116/-. Applying Sarla Verma (supra), the compensation works out as under:

(i)

Total gross income of the deceased

= Rs.3,61,392/-/.

(ii)

Income tax in the Assessment year 2008-09

= 57,417/-

(iii)

Net income

= 3,03,975/-.

(iv)

Future prospects 30% (the age of the deceased being 46 years)

= 91,192.50/-

(v)

Deduction one-third (as the dependants were three)

= 131722.50/-

(vi)

Multiplier applied

= 13

(vii)

The total dependency

= 34,24,785/-

6. In my view, an award of Rs.10,000/- towards loss of love and affection was on the lower side. I enhance the same to Rs.25,000/-. The compensation of Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate, Rs.5,000/- for funeral expenses is in consonance with Sarla Verma (supra).

7. Thus, the total compensation comes to Rs.34,69,785/-. The enhanced compensation of Rs.15,52,809/- shall carry interest @ 7.5% per annum from the date of filing of the petition till realization of the amount.

8. Out of the enhanced compensation a sum of Rs.3,00,000/- along with the proportionate interest shall be held in the FDR in the name of the Appellant''s minor son Gurdeep Singh till he attains the age of majority. He shall, however, be paid monthly interest which shall be utilized for his maintenance by Appellant No.1 Sarabjeet Kaur wife of the deceased. The amount payable to Appellant No.1 Sarabjeet Kaur shall be held in a fixed deposit for a period of three years.

9. 50% of the amount payable to Narender Kaur Appellant No.3 shall be held in fixed deposit for a period of three years and rest 50% for five years.

10. All the Appellants shall be entitled to interest on monthly basis.

11. Appeals are disposed of in the above terms. No costs.

12. All pending applications stands disposed of.

13. Copy of the order be given to the Appellants and UCO Bank, Delhi High Court Branch. Copy of the order may be sent to the Trial Court for information.