(2008) 02 DEL CK 0184

In the Delhi High Court

Case No : MAC APP 15 of 2008

Saroj Joshi and Others APPELLANT

Vs

Mohd. Farooq and Others RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0184

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Manish Mannie, for the Appellant; P.K. Seth, for the Respondent

Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellants seek to challenge the impugned award dated 13/4/2007 so as to claim enhancement in the compensation over and above the amount awarded in their favor by the Tribunal.

2. The factual scenario of the case to deal with the rival contentions of the parties is as under:

3. On 5.12.2004 at around 4:15 pm the deceased Sh. Harish was driving a motorcycle near Hindon river bridge of Meerut-Bagpat Raod, within the jurisdiction of PS Balaini, UP. One bus bearing registration No.UP-15-Q-9708 in rash and negligent manner, hit the motorcycle. As a result, Sh. Harish died. The other appellants were injured.

4. Counsel for the appellant has raised three grounds for claiming enhancement in the compensation. The first ground taken by the appellant is that the Tribunal has not considered the grant of any future increase in the minimum wages and for the entire multiplier of 17, the wages which were applicable on the relevant date of the accident have been taken into consideration. The second contention raised by the counsel is that only a meager amount of Rs. 5,000/- has been granted in favor of appellant No. 1 towards loss of consortium, although the deceased was of 30 years of age at the time of accident and he was survived by

young widow. The third contention of learned Counsel for the appellant is that the Tribunal has failed to grant any amount towards loss of love and affection besides granting meager amount towards loss of estate and funeral expenses at the rate of Rs. 5,000/- each.

5. Per contra, Mr. P.K. Seth, counsel appearing for the respondent contends that the appellants are not entitled to any further amount of compensation over and above the amount already granted by the Tribunal. The contention of learned Counsel is that there is no absolute rule that in every case where income of deceased is assessed under the Minimum Wages Act, invariably, future increase is also to be reckoned for determining loss of financial dependence. The counsel also contended that for claiming any increase in the future, cogent and sufficient grounds/reasons have to be disclosed by the claimants and in the absence of the same, future increase cannot be taken into account for determining loss of financial dependence. Counsel for the respondent also did not find any infirmity so far the award of compensation under other heads are concerned.

6. I have heard learned Counsel for the parties and have perused the record.

7. The future prospects would necessarily mean advancement in future career, earnings and life. It could be considered by seeing, at which post a person began his career, what progress he will make in a particular avocation and what further potential he has to climb up the ladder in his career in the times to come. The promotional avenues, career progression, grant of selection grades etc. are some of the features for considering one''s future prospects in one''s career.

8. The minimum wage, in the very context of economy has a correlation with the growth and development of the nation''s economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance and survival of the workman class. Keeping this in view under no circumstance, the revision of minimum wages can be treated on the same footing with the factor of future prospects.

9. This Court has consistently taken this view that in every case where income of deceased is assessed under the Minimum Wages Act, future increase is also to be reckoned for determining loss of financial dependence. Increase in minimum wages is not akin to future prospects for the reason that inflation eats into the purchasing power of the rupee and to neutralize the falling power of the rupee, wages are increased while future prospects concerns the advancement in career and life of a person. A perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually become double after every 10 years and the fact that deceased would have worked for another 17 years, it could reasonably be assumed that his earnings would at least double by the time he would have left gainful employment. Thus, the tribunal erred in not considering future increase in income while computing compensation and the same should have been

considered.

10. As regards the contentions of the counsel for the appellants that the compensation towards loss of consortium at Rs. 5,000/- and Rs. 5,000/- towards loss of estate and funeral expenses as awarded by the tribunal is meager, I feel that the same should be enhanced to Rs. 50,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate and funeral expenses. As regards the contention of the counsel for the appellant that the tribunal has erred in not awarding any amount towards loss of love and affection to the children of the deceased, I feel that the same should be awarded at Rs. 30,000/-. If we look into the IInd Schedule to the Motor Vehicles Act, 1988, it would be noticed that the legislature has categorised cases into fatal and injury/disability cases for the purpose of non-pecuniary/general damages. In case of death of the accident victims, the legislature has broadly pointed out heads under which, compensation shall be paid as general/non-pecuniary damages, viz. funeral expenses; loss of consortium, if beneficiary is the spouse; loss of estate and medical expenses-actual expenses incurred before death, supported by bills/ vouchers. The legislature has also laid down the maximum amount of compensation payable under each head. Similarly, in case of injury/disability of the accident victims, maximum limit of amount of compensation under each head is mentioned. Compensation towards loss of love and affection is granted by the Tribunals as the same should be awarded to the family members of the victims of accident other than the spouse, this is so because the Courts and Tribunals found that the head of loss of consortium takes care of loss of company to spouse but other family members should also be compensated under the head of loss of love and affection when claimants are members of the family, other than spouse, of the deceased/victim of the accident. In the instant case, the deceased died at a very young age of 30 years and is survived by his young family, a widow wife, 2 minor daughters and a minor son.

11. In view of the above discussion, the total compensation is enhanced to Rs. 7,32,000/- from Rs. 4,53,000/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondents.

12. With the above direction, the present appeal is disposed of.

