(2009) 04 DEL CK 0347

In the Delhi High Court

Case No : F.A.O. No. 371 of 1997

Sh. Rama Nand and Others APPELLANT

Vs

Har Bhajan Singh and Others RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0347

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Appellant; D.P. Bhargawa, for R-1, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 3.9.1997 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,27,780/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

That on 9.5.1992 Sushil Kumar @ Pinto (now deceased) was paddling his cycle at a slow speed and was coming to his residence after purchasing milk from M/s Tyagi General Store, Delhi and when he reached near New Patparganj Road bus stop and at that very time a tanker bearing registration No. DHL 3326 driven by respondent No. 1 rashly and negligently and at a very fast speed came from behind and struck against the deceased without blowing any horn or giving any signal. With the result of this forceful impact the deceased fell down along with his cycle and the front wheel of the said tanker passed over the deceased and the deceased succumbed to his injuries at the spot of the accident.

3. A claim petition was filed on 17.8.1992 and an award was made on 3.9.1997. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. Y.R. Sharma, counsel for the appellants has assailed the said award on five

grounds. Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1738/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of 50% of the income of the deceased towards personal expenses when the deceased was supporting his parents at the time of accident and is survived by his parents. The counsel submitted that the tribunal erroneously applied the multiplier of 12 while computing compensation while according to the facts and circumstances of the case multiplier of 15 should have been applied. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 15 yrs of age only and would have lived a long life had he not met with the accident. The counsel also stated that had the deceased not met with his untimely death he would have expanded his business and would have earned much more in the near future. It was also submitted by the counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in an year and hence, the deceased would have earned much more in his life span. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 24% per annum in place of only 12% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants. In support of his submission counsel for the appellants has placed reliance on Smt. Anari Devi Vs. Shri Tilak Raj and Another, .

5. Per contra Mr. Kanwal Chaudhary, counsel appearing for the respondent/New India Assurance Co. Ltd. refuted the submissions made by the counsel for the appellant. He contended that the Award made by the Tribunal is just and fair and there is no need to interfere with the findings given by the Tribunal.

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

7. The appellants/claimants had produced one witness Mr. Naresh Chand Sharma to prove that the deceased was working at the General store under the name and style of Bharat General Store running from his residence and was earning Rs. 1500/- p.m. from his General Store. The father of the deceased entered the witness box as PW5 and deposed that the deceased was 15 years of age and was studying in 9th standard in the second shift from 12:30 pm to 6:00 pm. He further deposed that he opened the General Store for the deceased and out of it the deceased was earning Rs. 1500/- pm. He deposed that the deceased used to sit at the said shop from 6:00 am to 11:00 am and thereafter his wife/mother of the deceased used to sit at the shop. The deceased used to sit at the shop in the evening as well, deposed PW5. The Tribunal, however did not believe the

evidence of the witness that the deceased was running the General Store and was earning Rs. 1500/- p.m. After considering all these factors I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 1738/- after considering minimum wages notified under the Minimum Wages Act.

8. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

9. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.

10. Therefore, no interference/enhancement is made in relation to income of the deceased by this Court.

11. However, a perusal of the minimum wages notified under the Minimum Wages Act shows that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Therefore, the tribunal erred in not considering increase in minimum wages while assessing income of the deceased.

12. As regards the contention of the counsel for the appellant that the 50% deduction made by the tribunal are on the higher side as the deceased is survived by his parents. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am inclined to interfere with the award on this ground and modify the award by deducting 1/3rd expenses towards personal expenses.

13. The next contention raised by the counsel for the appellant was that the tribunal erred in applying the multiplier of 12 in the facts and circumstances of the case. This case pertains to the year 1992 and at that time II schedule to the Motor Vehicles Act was not brought on the statute book. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon''ble Apex Court in 1994 SCC (Cri) 335 G.M. Kerala SRTC v. Susamma Thomas. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. The deceased was of 15 years and his father was of 42 years at the time of the accident. In the facts of the present case, I am of the view that, after looking to the age of the claimants and the deceased and after considering applicable multiplier under M.V. Act the appropriate multiplier would be of 13.

14. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 24% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and

requires no interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon''ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. The award pertains to the year 1997. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 12% pa by the tribunal and the same is not interfered with.

15. On the contention regarding that the tribunal has erred in not granting adequate compensation towards funeral expenses, while, no compensation has been granted towards loss of love & affection, loss to estate and the loss of services, which were being rendered by the deceased to the appellants. In this regard compensation of Rs. 10,000/- is awarded towards funeral expenses instead of Rs. 2500/- as awarded by the tribunal; Rs. 20,000/- is awarded towards loss of love and affection. Further, Rs. 10,000/- is awarded towards loss to estate.

16. As far as the contention pertaining to the award of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of their only son and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

17. On the basis of the discussion, the income of the deceased would come to Rs. 2,607 after doubling Rs. 1,738 to Rs. 3,476 and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,738 and the annual loss of dependency comes to Rs. 20,856 per annum and after applying multiplier of 13 it comes to Rs. 2,71,128. Thus, the total loss of dependency comes to Rs. 2,71,128/-. After considering Rs. 40,000/-, which is granted towards non pecuniary damages, the total compensation comes out as Rs. 3,11,128/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 3,11,128/- from Rs. 1,27,780/-. The differential amount shall be paid to the appellants by the respondent insurance company with interest @ 7.5% per annum from the date of filing of the petition till realisation. The differential amount shall be shared by them in equal proportion.

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

