(2009) 04 DEL CK 0284

In the Delhi High Court

Case No : FAO No. 591 of 2002

Sh. Subhash Sharma and Others APPELLANT

Vs

Sh. Satish Kumar and Others RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0284

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Manoj Ranjan Sinha, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 23/7/2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 7,40,000/- along with interest @ 9% per annum to the claimants.

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

3. On 27/5/1997 Maj. Subhash Sharma was returning from AIIMS to his house located at Noida on his two-wheeler scooter bearing registration No. UP 15 E 4997 with his wife Smt. Prabha Sharma after visiting a relation who was hospitalized in AIIMS. He was driving the said scooter while his wife was sitting on the pillion seat. At around 2:00 pm they crossed Apollo Hospital at Mathura Road and had covered a distance of 500 mtrs. Suddenly, a Maruti car bearing registration No. DL 2 CE 6131 coming from behind rammed into the scooter being driven by Maj. Subhash Sharma near petrol pump at Mathura Road. Due to forceful impact both husband and wife fell on the left side and received multiple injuries. Mrs. Prabha later succumbed to her injuries. A claim petition was filed on 11.7.1997 and an award was passed on 23/7/2000. Aggrieved with the said award, enhancement is claimed by way of the present appeal.

4. Sh. S. Janani Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 7,000/- per month whereas after

looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 8764/- per month. 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 she was of 44 yrs of age only and would have lived for another 20yrs had she not met with the accident. It was also urged 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 her life span. The Counsel contended that the tribunal erred in not awarding adequate compensation towards non-pecuniary damages. The Counsel also urged that the tribunal erred in not awarding compensation towards expenses incurred in transporting the deceased from the accident spot to the hospital and further expenses incurred in transporting her dead body after she expired from hospital to Noida and thus claimed Rs. 3,500/- in this regard. The Counsel also contended that the tribunal erred in not awarding compensation for the tuition of the children which they would not have paid had the deceased been alive.

5. Per contra learned Counsel for the respondents have refuted the contention of the appellants.

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

7. The appellants claimants had brought on record the salary certificate, Ex. PW3/A and Sh. Gopal Krishan Sr. Accountant of the Apeejay School, Noida, where the deceased was employed as a primary teacher proved the said salary certificate. According to the said salary certificate the deceased''s date of birth was 9/7/1953 and her gross salary at the time of death was Rs. 5130/- pm in the pay scale of Rs. 4500-125-7000/-. The tribunal considering that the deceased was in regular employment of the said school and also considering that she would have earned increments over the years had she not met with her untimely death assessed the income of the deceased at Rs. 7,000/- pm. It is no more res integra that mere bald assertions regarding the income and the future prospects of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. In the instant case the appellants have duly proved the income and the future prospects of the deceased and after considering all these factors, I am of the view that the tribunal has rightly assessed the income of the deceased at Rs. 7,000/- pm. The deceased on the date of accident was of 44 years of age and would have served the school till the age of 60 years. The petitioner in the present petition has claimed salary of Rs. 12,250/- by the notional salary but in the absence of any evidence the same cannot be considered. However, safely the salary of Rs. 7,000/- can be accepted which will also include the future prospects of the deceased.

8. As regards the contention of the Counsel for the appellant that the tribunal erred in not allowing tuition expenses, I feel that there is no merit in the said

contention as the tribunal considering that the appellants suffered monetary loss on account of death of Mrs. Prabha and had suffered loss of services which she was rendering to them and for when they will have to take assistance of others, allowed Rs. 50,000/- under the said head although same is not a conventional head of damages. Furthermore, nothing has come on record to prove that the appellants were incurring Rs. 1,000/- per month on tuition. Therefore, I do not feel inclined to award separate compensation for tuition expenses.

9. On the contention that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses and loss of estate, whereas, no compensation has been granted towards loss of consortium and the loss of services, which were being rendered by the deceased to the appellants. In this regard compensation towards loss of love and affection is enhanced to Rs. 20,000/-; compensation towards funeral expenses is enhanced to Rs. 10,000/- and compensation towards loss of estate is enhanced to Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

10. As regards the contention that the tribunal erred in not allowing transportation expenses, I feel that the compensation as enhanced herein above will take care of the said expenses as well. Thus, no separate amount is awarded for the said expenses.

11. 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 the deceased 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.

12. On the basis of the above discussion, the income of the deceased after considering future prospects would come to Rs. 7,000/-. After making 1/2 deductions the monthly loss of dependency comes to Rs. 3,500/- and the annual loss of dependency comes to Rs. 42,000/- per annum and after applying multiplier of 15 it comes to Rs. 6,30,000/-. Thus, the total loss of dependency comes to Rs. 6,30,000/-. After considering Rs. 1,40,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 7,70,000/-.

13. In view of the above discussion, the total compensation is enhanced to Rs. 7,70,000/- from Rs. 7,40,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the petition till realisation. The differential amount should be paid to the appellants in equal proportion by the respondent insurance company.

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

