
(2019) 09 DEL CK 0464
In the Delhi High Court
Case No : MAC.APP. No. 76 Of 2018

Sharda & Anr

APPELLANT

Vs

Puran Chand & Anr (New India Assurance Co Ltd)

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0464

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Jitender Kamra, J.P.N. Shahi, Shivangi Krishna

Final Decision : Disposed Of

Judgement

Najmi Waziri, J

1. At joint request, the case is taken up for disposal alongwith MAC. APP. 660/2017.

2. This appeal seeks enhancement of the award of compensation dated 27.04.2017 passed by the learned MACT in MAC No. 89/14, on the ground that instead of age of the deceased, the age of the parent was taken into consideration. In view of the dicta of the Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi & Ors. (2017) 16 SCC 680, the age of the deceased ought to be the determinant multiplier. The deceased was 19 years of age, therefore, the multiplier of 18 would be applicable. Additionally, compensation towards "loss of future prospects" @ 40% shall be granted in terms of the same judgment.

3. The appellant also seeks enhancement of Rs. 15,000/- per month on the basis of deposition of PW-1/Smt. Sharda that the deceased was earning Rs. 15,000/- as a taxi driver. She had stated that he was holding a valid Driving Licence and therefore, the impugned order erred in not taking into consideration the minimum wages applicable to a skilled worker in Delhi. The Court would note

that in her deposition-Ex. PW1/A, she had stated in "Evidence by way of affidavit" dated 27.02.2015 as under:-

"2. That deceased Sudhir Kumar was unmarried had left behind present petitioners as only legal heirs. That petitioner No.1 is mother of deceased who is housewife aged 50 yrs presently. Petitioner No.2 is father of deceased aged 51 yrs presently. Copy of election I card of petitioner No.2 is exhibited as PW1/2. That both the petitioners were financially and emotionally dependent upon the deceased who was working as driver at Delhi earning about Rs. 500/- per day and used to work for almost 30 days in a month earning about Rs 15,000/- per month. That income of deceased used to rise with the passage of time and experience. That initially deceased was earning Rs.9,000/- about two -three years back which kept on rising and at the time of accidental death was earning Rs. 15,000/- per month being taxi driver with Dinesh Singh of Paharganj, Delhi . That deceased was young and dynamic used to put extra efforts and time in his career as such there was no dearth of growth opportunities for deceased. That deceased used to reside at Delhi and work at Delhi. That deceased used to contribute toward household expenses and used to pay Rs. 10,000/- per month to deponent. That deceased wanted to purchase his own taxi after gaining some experience. Copy of driving licence of deceased is exhibited as PW 1/3. That election I card of deceased is exhibited as PW1/4."

4. In the cross-examination, she had stated as under:

"....

Bishan is residing in the nearby Village. My deceased son Sudhir was youngest amongst my children. The deceased was a driver at Delhi with one Sh. Dinesh. It is wrong to suggest that the deceased Sudhir was not employed as driver. It is correct that the deceased was not having a commercial driving licence. (Vol. My son was having a private driving licence). It is correct that I have not placed on record any documentary proof as to the earning of my deceased son.

..."

5. What emerges from the aforesaid discussion is that the deceased was holding a valid Driving Licence (Exhibit PW1/3). There is a presumption that he had passed a driving test before the Driving Licence was granted to him and that his skills were tested by the Licencing Authority. Therefore, he would necessarily be required to be categorized as a skilled worker. Although, he may not be able to prove his minimum wages because ordinarily in the unorganized sector, there is no set contract of employment, unlike with corporate body. In the circumstances, the notified minimum wages of a skilled worker would be applicable, which at the relevant time was Rs. 9,802/-.

6. Furthermore, each of the claimants shall also be entitled to compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively as per the dicta of the Supreme Court in Magma

General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546. Additionally, compensation towards 'Loss of Estate' and 'Funeral Expenses' shall also be payable @ Rs. 15,000/- under each of the heads. Accordingly, the total payable amount would be as under:

S.No.

Particulars

Amount

1.

Loss of future prospects $[9,802/-(\text{notional income}) \times 12(\text{months}) \times 18(\text{multiplier}) \times 140/100(\text{future prospects}) \times 50/100(\text{personal expenses})]$

Rs. 14,82,063/-

2.

Loss of love and affection

Rs. 50,000 x 2 (claimants) = Rs. 1,00,000/-

3.

Loss of consortium

Rs. 40,000 x 2 (claimants) = Rs. 80,000/-

4.

Loss of Estate

Rs. 15,000/-

5.

Funeral Expenses

Rs. 15,000/-

TOTAL

Rs. 16,92,063/-

7. The insured has already deposited Rs. 6,58,676/-. Hence, the enhanced amount of Rs. 10,33,387/- (Rs. 16,92,063/- less Rs. 6,58,676/-) alongwith interest thereon @ 9% from the date of the filing of the petition till its realisation be deposited by the insurer within three weeks of receipt of a copy of this order. Upon deposit, the said monies shall be released to the beneficiaries of the award in terms of the scheme of disbursement specified therein. The appellant has also been granted right of recovery as ordered in MAC.APP. 660/2017.

8. The appeal is disposed-off in terms of the above.