

(2014) 11 DEL CK 0069
In the Delhi High Court
Case No : MAC.A. No. 1151/2013

Shriram General Insurance Co. Ltd.

APPELLANT

Vs

Sudarshan Kumari

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2014) 11 DEL CK 0069

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : K.L. Nandwani and Sameer Nandwani, Advocate for the Appellant;
Kirti Sethi, proxy counsel and J.P.N. Shahi, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present appeal, the Appellant-Insurance Company assailed the award dated 24.08.2013 whereby the learned Tribunal awarded compensation of Rs.14,66,676/- with interest @ 7.5% per annum from the date of filing the claim petition till realisation of the compensation amount.

2. Learned counsel appearing on behalf of the appellant has argued the sole ground that the respondent/claimant failed to establish the salary and employment of deceased Balwinder Singh who was 42 years of age at the time of accident. Despite, the learned Tribunal has added 30% in his actual income towards future prospects. In case, it is not established that the deceased or injured was in a permanent employment, the future prospects ought not to have been added in his actual income.

3. To strengthen his arguments learned counsel for the appellant has relied upon the the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr. delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013, wherein the Full Bench of the Supreme Court has held as under:-

36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the

method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

4. The issue of future prospects raised in the present appeal has been considered by this Court in the case bearing MAC. APP. No. 846/2011 titled as "ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.", decided on 30.09.2013, wherein while relying upon the dictum of Rajesh and Others Vs. Rajbir Singh and Others, , this Court held as under:-

22. The Apex Court in Rajesh has discussed the issue regarding the assessment of future prospects; and has also come to a specific conclusion that the self-employed or persons with fixed wages are entitled for future prospects. The Apex Court succinctly specified the reasons for the same considering the socio-economic changes in the society. It also made thrust on the age of the deceased as one of the factors for computing the future prospects.

23. I note, the Apex Court in Santosh Devi noted the finding in Sarla Verma; and canvassed a different reasoning regarding the assessment of future prospects: one of the factors in the multiplicand.

24. The Apex Court in Santosh Devi, did not refer the matter to a Larger Bench, whereas it followed all the principles formulated in Sarla Verma except the finding in respect of the assessment of future prospects for the persons falling under the category of self-employment / fixed wages.

25. It is legally significant to note the dictum laid down by the Constitution Bench of Apex Court in Central Board of Dawoodi Bohra Community and Anr. (Supra). The Apex Court held as under:

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the

matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."

26. While considering the case of Santosh Devi, the Apex Court did not feel to refer the matter to a Larger Bench. Therefore, it can be concluded that there is no contradictions in the finding of Sarla Verma and Santosh Devi, in turn the Apex Court extended the scope and ambit of Sarla Verma through Santosh Devi.

27. In view of above, this court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon''ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self employment / fixed wages this court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh."

5. It is not in dispute that the deceased Balwinder Singh died in the accident on 22.05.2012 at the age of 42 years. Since the claimants could not establish the employment and the salary of the deceased, therefore, the learned Tribunal has determined his salary as 8528/- as per the minimum wages applicable in matriculate. Accordingly, the Id. Tribunal has added 30% in his actual income towards future prospects.

6. Keeping in view the dictum of this Court in the case of Angrej Singh (Supra), I find no merit in the instant appeal. The same is accordingly dismissed with no order as to costs.

7. The Registry of this Court is directed to release the statutory amount in favour of the appellant and the compensation amount, if any, in favour of the respondents/claimants.