(2008) 03 DEL CK 0225

In the Delhi High Court

Case No : Mac Appeal No. : 667 of 2007

Smt. Jeet Puri and Others — APPELLANT

Vs

Raghu Prashad and Others — RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2008) 11 ILR Delhi 79 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Swati Bhushan Sharma, for the Appellant; Pankaj Seth, Advocate, for the Respondent

Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellant seeks to challenge the impugned award so as to claim enhancement in the compensation amount over and above the amount of Rs. 16,91,584/- awarded by the Tribunal. Brief summary of facts to deal with the contentions of the parties, are that on 26.4.2003 at about 5:40 AM, the deceased was standing on the road and was looking at the gate of his car bearing Registration No. DL 3CB 8765, near the main gate of DDA/Modern Park, New Delhi and at that time a TSR bearing Registration No. DL IRG 7914 came from the direction of Moolchand Hospital and hit the deceased as a result of which the deceased full down and died at the spot.

2. Ms. Swati Bhushan Sharma, counsel appearing for the appellant has mainly raised four grounds so as to claim enhancement in the compensation amount. The first grievance of the appellant is that the Tribunal has not applied the correct multiplier as laid down in the IInd Schedule of the Motor Vehicles Act. Contention of the counsel for appellant is that the deceased was of 53 years of age as on the relevant date of accident and the applicable multiplier as per the IInd Schedule of the Motor Vehicles Act, is 11 and not 8.

3. Another contention raised by the counsel for the appellant is that the Tribunal has not correctly assessed the income of the deceased. Contention raised by the

counsel for the appellant is that the Tribunal has not taken into account the income which was being earned by the deceased from other sources although, the deceased has duly paid tax on the said income.

4. Per contra, Mr. Pankaj Seth, counsel for the respondent refutes the submissions made by the counsel for the appellant Mr. Seth submits that without there being any evidence produced by the appellant with regard to disclosure of business of the deceased, still the Tribunal has been quite considerate in awarding compensation in favour of the appellant at an excessive amount. Counsel for the respondent, thus, tried to justify the impugned award and prays that the appellant is not entitled to any further enhancement in the compensation amount as the compensation amount awarded by the Tribunal is just, fair and reasonable as per the mandate of Section 168 of the Motor Vehicles Act.

5. I have heard learned counsel for the parties and have perused the record.

6. Counsel has invited my attention to the Income Tax Return filed by the deceased for the assessment years 1999-2000, 2001-02 and 2002-03. The Income Tax Returns filed for the financial year 1.4.1999 to 31.3.2000 shows that his total income was Rs. 4,77,772/- and income of Rs. 3,29,851 for the financial year 2000-01 and Rs. 6,87,004/-for the financial year 1.4.2001 to 31.3.2002. For all these financial years, the deceased has also disclosed his income from other sources at Rs. 1,03208/-, Rs. 1,13,083/- and Rs. 3,55,268/-. Thus, income from other sources is besides the income which was being earned by the deceased through salary. Perusal of the income tax returns filed by the appellant clearly shows that the appellant has paid income tax on the total income earned by him through salary as well as through other sources. Once the tax has been paid by the deceased on the total income being earned by him through two separate sources, then the income which was being earned by the deceased through other sources could not have been excluded for determining the earnings of the deceased. The Tribunal has taken an average of the incomes of the said financial years and after deducting 1/3 therefrom, has assessed the dependency at Rs. 2,08,323/-per annum.

7. Since the tribunal has not given any reason for excluding the said income which was being earned by the deceased from other sources, therefore, if we add the said income as disclosed by him in all these said Income Tax returns, the same would come out to Rs. 5,71,559/- and dividing the same by three, average income of the deceased would come to Rs. 1,90,520/-. After deducting 1/3 therefrom towards personal expenses, the loss of dependents would come to Rs. 1,27,013/-.

8. The next ground of challenge by the appellant is that the Tribunal has not correctly applied multiplier as laid down in the IInd Schedule of the Motor Vehicles Act. I find there is merit in the submission of learned counsel for the appellant. The Tribunal has not given any reasons in the award as to why the

Tribunal has deviated from the applicable multiplier as laid down under the IInd Schedule of the Motor Vehicles Act. The applicable multiplier as per the IInd Schedule is 11 and not 8, keeping in view the age of the deceased who was 53 years of age at the relevant time of the accident. The same is accordingly modified from 8 to 11.

9. The third ground of challenge made by the appellant is that the Tribunal has awarded lower rate of interest @ 6% per annum which was not given as per the banking rate. The same is also enhanced from 6% to 7.5% per annum.

10. The deferential amount of compensation shall be paid by respondent No. 3 insurance company from the date of filing of claim petition till realization. With the above directions, the matter is remanded back to the tribunal for apportionment of the amount of compensation with up to date interest in favour of the appellants/claimants.

