

(2008) 01 DEL CK 0198

In the Delhi High Court

Case No : Mac. App. No"s. 340-43 of 2005

Smt. Kailashwati and Others

APPELLANT

Vs

Shri Balbir Singh and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0198

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Kamlesh Kumar, for the Appellant; Pankaj Seth, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this appeal the appellants seek to challenge the impugned Award whereby the compensation of Rs. 3 lakhs was awarded in favour of the appellants. To deal with the contentions of the counsel appearing for the parties it would be appropriate to give brief summary of the facts.

2. On 1.7.1998, Sh. Mohinder Singh was travelling on the two wheeler scooter bearing registration No. DDM 6760 which was being driven by SH. Kishan Chand Sisodhia. When they reached Sant Nirankari Colony towards Sant Nirankari Sarover, a truck bearing registration No. DHG 789 being driven in a rash and negligent manner came from the opposite direction and hit the two wheeler scooter. Sh. Mohinder Singh died on the spot.

3. I have heard learned Counsel for the parties and have perused the records. The grievance of the counsel for the appellant is that the deceased Sh. Mohinder Singh was working as a Malaria Inspector and was of 37 years of age. Counsel has sought to urge that his retirement age was 60 years and in a span of the remaining period of service he would at least attain some position in his career and would have earned an income of not less than Rs. 10,000/- per month. Counsel further contends that an independent witness from the Department was summoned and in his deposition he has stated that the salary of the deceased would have increased to Rs. 10,000/- per month had he not met with the said

accident. The appellant is further aggrieved with the meager amount of compensation granted towards the loss of consortium and towards the loss of love and affection. Counsel is also aggrieved that no compensation has been granted towards loss of estate.

4. Mr. Pankaj Seth appearing for the insurance company on the other hand contends that the Tribunal is quite considerate in granting the compensation. Placing reliance on the Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, to contend that unless by sufficient evidence the future increase is established, no amount of compensation towards future prospects can be granted. Even under other heads the compensation is just and fair.

5. The Tribunal has applied the criteria laid down in the Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and has assessed the income of the deceased at Rs. 2734.50. Instead of Rs. 1823/-, which he was drawing at the relevant date of the accident. The Tribunal has further observed that the appellants have failed to produce on record any cogent evidence with regard to the future increase of the income of deceased in his service. In the case of Bijoy Kumar's case (supra) the Apex Court has authoritatively held that unless by way of some material or cogent evidence the increase towards the future prospect is established, bald statements may not be sufficient to assess the income of the deceased. Relevant para of the said judgment is referred as under:

The mere assertion of the claimants that the deceased would have earned more than Rs 8000 to Rs 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

6. In the light of the above position and in view of the fact that the Tribunal has already applied the criteria laid down in the Sarla Dixit's case (supra), I am not inclined to interfere in the finding of the Tribunal so far as the same is concerned with the income of the deceased as arrived at by the Tribunal. As regards the finding of the Tribunal on the loss of consortium, I feel the same is quite inadequate. The same is increased from Rs. 15,000/- to Rs. 50,000/-. The amount awarded towards loss of love and affection is quite meager. The same is increased from Rs. 15,000/- to Rs. 30,000/- and towards loss of estate an amount of Rs. 25,000/- is awarded. The claimants/appellants have already received the compensation amount. The differential amount now shall be paid by the respondent @ 7.5% from the date of the filing of the petition till the realisation.

7. The appeal stands disposed of.