(2009) 04 DEL CK 0508

In the Delhi High Court

Case No : FAO No. 254 of 2003

Smt. Kanta Saxena and Others — APPELLANT

Vs

Sube Singh and Others — RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0508

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Appellant; P.K. Seth, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 8.1.2003 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,49,000/- along with interest @ 6% per annum to the claimants.

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

On 21.11.1995 at about 4.00 PM, Shri Sunil Kumar Saxena was boarding the bus bearing registration No. DL 1P 7409 at a local bus stand of ISBT, Delhi and at that time, respondent No: 1 all of a sudden drove the bus with a great jerk and as a result of rash and negligent driving of the bus by respondent No: 1, deceased fell down and received fatal injuries.

A claim petition was filed on 18.3.1996 and an award was passed on 8.1.2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. Y R Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1500/- 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. 1545/- per month. The counsel

further maintained that the tribunal erred in making the deduction to the tune of 1/3rd of the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his wife, daughter and mother. The counsel submitted that the tribunal erroneously applied the multiplier of 11 while computing compensation when according to the facts and circumstances of the case multiplier of 13 should have been applied. 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 he was of 48 yrs of age only and would have lived for another 20-30 yrs had he not met with the accident. It was also alleged 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 a year and hence, the deceased would have earned much more in his life span. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 6% per annum in place of only 9% per annum. The counsel contended that the tribunal erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants. The counsel has relied on following judgment in support of his contentions:

1. 1996 ACJ 561 SC Sarla Dixit and Anr. v. Balwant Yadav and Ors.

4. Shri P K Seth, Advocate appeared on behalf of respondent Insurance Company. He submitted that the award passed by the ld. Tribunal is just and fair and requires no interference by this Court.

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

6. Appellant No: 1 examined herself as PW-1 and deposed that her husband was a fruit vendor and was earning Rs. 5,000/- per month. She further testified that her deceased husband used to give his entire earnings to her for running the household expenses.

7. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

8. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.

9. The appellants claimants had not produced any documentary evidence to prove the income of the deceased After considering all these factors I am of the view that the tribunal has not erred in assessing the income of the deceased at

Rs. 1500/- in accordance with the minimum wages notified under M.V. Act.

10. Therefore, no interference is made in relation to income of the deceased by this Court.

11. As regards the future prospects I am of the view that no sufficient material exist on record to award future prospects.

12. However, a perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

13. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal is on the higher side as the deceased is survived by his wife and two children. In catena of cases the Apex Court has in similar circumstances allowed 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

14. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 11 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1995 and the IInd schedule came on the statute book in the year 1994 and the same should have been taken as the guiding factor. At the time of the accident the deceased was of 48 years of age and he is survived by his widow and two children. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 12 as per IInd Schedule of M.V. Act should have been applied. Therefore, in the facts of the instant case the multiplier of 12 shall be applicable.

15. As regards the issue of interest that the rate of interest of 6% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no/interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon''ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation. policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 6% pa by the tribunal and the same is not interfered with.

16. On the contention regarding that the tribunal has erred in not granting adequate compensation towards funeral expenses and loss of estate, whereas, no compensation has been granted towards loss of love and affection; 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 awarded at 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.

17. 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 their only son 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.

18. After taking double of Rs. 1500/- i.e. Rs. 3000/- & taking their mean, the income of the deceased comes to Rs. 2250/- after making 1/3rd deduction, the loss of dependency comes to Rs. 1500/- and the annual loss of dependency comes to Rs. 18000/-. After applying multiplier of 12 the total compensation comes to Rs. 216000/-

19. After considering Rs. 90,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 3,06,000/-.

20. In view of the above discussion, the total compensation is enhanced to Rs. 3,06,000/- from Rs. 1,49,000/-with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants by the respondent Insurance Company, in the same ratio as awarded by the tribunal.

21. With the above direction, the appeal is disposed of.

