(2012) 03 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : FAO No. 260 of 2006-B

Smt. Kashmiri Devi and Karam Chand — APPELLANT

Vs

Sher Singh and New India Assurance Company — RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0052

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : K.S. Banyal and Mr. Shivender Singh, for the Appellant; K.D. Sood , with Mr. Sandeep Pandey, Advocate for respondent No. 1 and Mr. B.M. Chuahan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Justice Deepak Gupta, J.—This appeal has been filed by the claimants claiming enhancement of the compensation. The claimants are the parents of deceased Munish Kumar, who unfortunately died in an accident when he was hit by the offending truck bearing No. HP-14-7569, while he was walking on the road. The deceased, Munish Kumar, had already completed his B.Sc. and B.Ed. and was studying in M.Sc. (Bio-Technology) in Shoolini Institute of Life Sciences and Business Management, Solan.

2. From the evidence on record, it is apparent that in matriculation, deceased, Munish Kumar, had scored more than 85% marks, since his matriculation certificate, Ex. P-1, shows that he was having 597 marks out of 700. Ex. P-2 is the merit certificate issued by the Himachal Pradesh Board of School Education, Dharamshala in this regard. The deceased was 23 years of age at the time when he unfortunately expired. Ex. P-3 is the result sheet of B.Sc., which shows that he had scored a total of 1059 marks out of 1700, i.e. more than 62% marks, which means that he had obtained first division in B.Sc. Ex. P-4 is the progress card of the deceased and it shows that out of the four subjects he was studying, he had obtained ''A'' Grade in two subjects, ''B'' in one and ''C'' in one subject.

The deceased was also the holder of the National Scholarship, as is evident from Ex. P-5. Ex. P-6 is the certificate showing that Munish Kumar had qualified B.Ed. scoring 509 marks out of 800, which works out to more than 64%.

3. Each case has to be decided on its own facts. Here, we are considering a young boy, who had a very bright future ahead. There is no doubt that in our country, there is unemployment and sometimes, even people, who are well qualified, do not get jobs. But, on the other hand, a realistic estimate has to be made about the income of such a person.

4. The deceased was a student at the relevant time and his income has to be assessed keeping in view the nature of his academic qualifications, his marks etc. The learned Tribunal has assessed his income at Rs. 4,500/- per month, which, in my opinion, is extremely low. Even a labourer in the year 2005 would be earning about Rs. 4,000/- per month. A person, who is doing Post Graduation having obtained first division both in Graduation and B.Ed., would definitely be expected to have higher income. The deceased was pursuing his studies in the field of Bio Technology. It is an emerging field, where salary of an employee is much greater than ordinary teachers. This fact has been totally glossed over by the learned Tribunal.

5. True it is, that no assessment can ever be 100% accurate and assessment has to be made taking into consideration various factors and some element of conjecture is involved. But the conjectures and guess works must also be reasoned and must be based on the factual situation. In this case, keeping in view the qualifications, which the deceased had, it would not be imprudent to expect that he would atleast become a school teacher, if nothing else. On the other hand, may be after pursuing his studies in Bio Technology and doing further studies, keeping in view his academic career, he could have ended being a University Professor or a Scientist.

6. Be that as it may, for the sake of this petition, taking the minimum expectation, i.e. of becoming a school teacher in a government school, his salary would not be less than 15,000/- per month. The learned Tribunal has deducted 1/3rd for the expenses of the claimants, but keeping in view the judgment laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 50% deduction would be made and the dependency has to be of Rs. 7,500/- per month or Rs. 90,000/- per year. The multiplier of 14 has to be used, keeping in view the age of the mother, who would get the maximum amount of the compensation. The compensation on account of loss of dependency works out to Rs. 12,60,000/-. In addition thereto, Rs. 10,000/- is awarded for funeral expenses, Rs. 10,000/- for loss to the estate and Rs. 20,000/- is awarded since he was the only son and the total compensation works out to Rs. 13,00,000/-.

7. Consequently, the appeal of the claimants is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs. 5,00,000/- to Rs. 13,00,000/-. On this amount, the claimants shall be entitled to interest @

6% per annum, as awarded by the learned Tribunal, from the date of filing of the claim petition, i.e. 30.05.2005 till deposit/payment of the amount. The award is apportioned as follows:

Rs. 10,00,000/-

Mother

Rs. 3,00,000/-

Father

The enhanced amount alongwith interest be deposited in the Registry of this Court latest by 30th June, 2012.