(2008) 03 DEL CK 0216

In the Delhi High Court

Case No : FAO No. 112 of 2002

Smt. Leena Malhotra and Others — APPELLANT

Vs

Shri Vinod Kumar and Others — RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0216

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ashok Popli, for the Appellant; D.K. Sharma, for R-3., for the Respondent

Judgement

Kailash Gambhir, J.—Respondents No. 1 and 2 have been served through publication, but despite service nobody is present. Respondents No. 1 and 2 are proceeded ex parte. Mr. D.K. Sharma is present for respondent No. 3. Service is complete. With the consent of the parties, the matter is taken up for final disposal.

2. By way of the present appeal the appellants seek to challenge the impugned Award so as to claim enhancement in the compensation amount over and above the amount of Rs. 1,72,692/- awarded by the Tribunal. Brief summary of the facts of the present case are as follows:

On 14.8.1992 at about 12.00 noon, the deceased Shri Ashok Kumar Malhotra while driving his two wheeler scooter was coming from Mall road side and was going towards Malka Ganj side, when the deceased reached opposite main gate of Law Faculty, Delhi University, a Tata Tempo bearing registration No. DL-1L-A-2183 driven by respondent No. 1 Sh. Vinod Kumar came at a fast speed and in a rash and negligent manner. The Tata Tempo came on the wrong side of the road and struck against the two wheeler scooter of the deceased with its front right portion as a result of which deceased with his scooter fell down on the road and sustained fatal injuries. Deceased was removed to Hindu Rao Hospital where he succumbed to injuries at about 2.30 p.m. Mr. Ashok Popli counsel appearing for the appellants contends that the Tribunal has not taken into consideration the income tax assessment order placed and proved on record in which the income of the deceased was disclosed as Rs. 3,000/- per month. Another grievance of the appellants is that the Tribunal has not correctly applied the multiplier, which as per the appellants is 17 keeping in view the Second Schedule of the Motor Vehicles Act in place of 13 as applied by the Tribunal. No amount of compensation has been awarded by the Tribunal towards loss of consortium and for funeral expenses. The deceased was survived by his widow, children and parents. Counsel further submits that children and parents of the deceased have also expired and only the deceased is survived by his widow.

3. Mr. D.K. Sharma, counsel appearing for the respondent insurance company on the other hand submits that the Tribunal has granted just, fair and reasonable compensation in favour of the claimants keeping in view the facts placed and proved on record by the claimants. Mr. D.K. Sharma submits that the claimants/ appellants have placed the assessment order for the assessment year 1991-92, return of which was filed on 22.1.1993 much after the date of the accident i.e. 30th August, 1992. Counsel for the respondent further contends that the Tribunal has rightly not placed any reliance on the said income tax assessment order, return of which was filed much later. Counsel for the respondent further submits that except the said document no other document prior to the said assessment order was placed on record by the appellants. Counsel thus submits that the Tribunal has correctly assessed the income of the deceased under the Minimum Wages Act. As regards the grievance raised by the appellants for grant of compensation towards loss of consortium and funeral expenses Mr. D.K. Sharma, counsel for the respondent leaves the same to the discretion of this Court.

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

5. Perusal of the record shows that the appellant had merely placed on record the income tax assessment order for the assessment year 1991-92 for which the return was filed on 22nd January, 1993. It was claimed in the petition that the deceased was earning a sum of Rs. 3,000/- per month from his business being run under the name and style of M/s G.R. Engineerings. To substantiate the claim of the said earning of the deceased the appellant had examined one Mr. Jagdish Kumar as PW-2, who in his deposition had shown the earning of the deceased between Rs. 4,000/- to Rs. 5,000/- per month. Appellant No. 1 Smt. Leena Malhotra also appeared in the witness box, she disclosed the earning of the deceased as Rs. 3,000/- per month. The said witness also could not place on record anything to show that the deceased was running a factory under the name and style of M/s G.R. Engineerings. In her cross-examination the widow of the deceased stated that the deceased was not an income tax payee. In support of the income only assessment order for the assessment year 1991-92 was placed on record and admittedly return of the said assessment year was filed much later in time after the date of accident i.e. 22nd January, 1993. The

Tribunal has correctly not placed the reliance on the said assessment order as that was the solitary document placed on record to establish the income of the deceased unsupported with any other evidence. The return of the said assessment year was filed on 22nd January, 1993 although the accident in question took place on 14th August, 1992. I do not find any infirmity in the finding of the Tribunal holding that the said assessment order has no relevance to establish the actual income of the deceased at the time of his death. The contention of the counsel for the appellants in this regard is accordingly rejected.

6. Perusal of the Award further shows that the Tribunal has applied multiplier of 13. The accident in question pertains to the period prior to introduction of the Second Schedule of the Motor Vehicles Act, which was brought in the year 1994. As per the Second Schedule of the Motor Vehicles Act the applicable multiplier is 17 and taking the analogy of the same the multiplier of 17 is made applicable in place of multiplier of 13. The deceased is survived by his widow and as per counsel for the appellants other legal heirs left by the deceased have already died. No amount of compensation towards loss of consortium has been granted by the Tribunal. The widow of the deceased as on the date of accident must be quite young as the deceased himself was 35 years of age. Grant of Rs. 50,000/- towards loss of consortium would be appropriate amount, which should be granted in favour of the appellant/widow of the deceased. An amount of Rs. 5,000/- is also granted towards funeral expenses. The differential amount shall be paid by respondent No. 3 insurance company with upto date interest @ 6% from the date of filing of the petition till 31st December, 1999 and @ 7.5% from 1st January, 2000 till filing of the petition.

7. With these directions the matter is remanded back to the tribunal for apportionment of the amount of compensation in favour of the appellants/ claimants.