(2009) 04 DEL CK 0585

In the Delhi High Court

Case No : FAO No. 153 of 2003

Smt. Mamta Maharana and Others APPELLANT

Vs

Purushotam and Others RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0585

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Y.R. Sharma, for the Appellant; Manjusha Wadhwa, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 9th December 2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 29,10,704 along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows: The deceased Sh. Bhagabata Maharana, aged about 31 Yrs. was working as senior engineer in a renowned company. On 19th March 1997, the deceased was driving his two wheeler scooter bearing registration No. DL 8SC 9826 and was going to his office and when at about 10:30 A.M. he reached near Shahpur Stand, opposite Prakash Automobile, Outer Ring Road, Delhi, a truck bearing registration No. HR 38 7276 driven in a rash and negligent manner came from the rear and struck against the scooter. The scooterist fell down on the road and the wheel of the said truck passed over the head of the deceased and the deceased received fatal injuries and died at the spot of accident.

3. A claim petition was filed on 7th July 1997 and an award was made on 9th December 2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. The appellants have assailed the said award on following grounds. The counsel for the appellant submitted that the tribunal has erroneously applied the multiplier of 13 while computing compensation when according to the facts and circumstances of the case multiplier of 20 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 only 31 yrs. of age at the time of the accident and would have lived and worked for another 40 years had he not met with his untimely death. The counsel also stated that had the deceased not met with his untimely death he would have touched new heights of achievements. He was a qualified Engineer in Telecommunications and its submitted that deceased would have joined an MNC and would have been promoted to a very high and prestigious post and then he would have been earning atleast 40,000/- per Month. 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 @ 12% per annum in place of only 9% per annum. The counsel contended that the tribunal has 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.

5. Ms. Manjusha Wadhwa counsel appearing for the respondent insurance company refuted the said contentions of counsel for the appellants and submitted that the award passed by the Learned MACT is already on the higher side and requires no further interference.

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

7. The appellants claimants produced PW1 Sh. K.S. Gopala Krishan, Personal Manager of M/s. Bharti Cellular Ltd., the company with which the deceased was employed ,the said witness deposed that the deceased was earning Rs. 18,434/- pm as his salary. The said witness also deposed that Rs. 12,266/- was deducted from his salary by the employer. On perusal of the record it is revealed that the said Personnel Manager had issued a salary certificate wherein it is stated that the deceased joined the employment with the Bharti Cellular Ltd. on 24/1/1995 at a salary of Rs. 9,512/- pm plus various perks. It further finds mention in the said certificate that in less than two and a half years the deceased quickly rose to the post of Sr. Engg. (Switch) on a gross salary of Rs. 19,412/- pm plus various perks. The said certificate also states that had the deceased not died his untimely death he would have retired with at least a gross salary of Rs. 2,54,491/- per month plus various perks. On the basis of the above discussion, it is manifest that the tribunal has not erred in assessing the income of the deceased at Rs. 18,434/-.

8. As regards the future prospects, I am of the view that there is sufficient material on record to award future prospects. On perusal of the record it is revealed that the Personnel Manager of Bharti Cellular Ltd. had issued a salary

certificate wherein it is stated that the deceased joined the employment with the Bharti Cellular Ltd. on 24/1/1995 at a salary of Rs. 9,512/- pm plus various perks. It further finds mention in the said certificate that in less than two and a half years the deceased quickly rose to the post of Sr. Engg. (Switch) on a gross salary of Rs. 19,412/- pm plus various perks. The said certificate also states that had the deceased not died his untimely death he would have retired with atleast a gross salary of Rs. 2,54,491/- per month plus various perks. On perusal of the award it becomes manifest that the tribunal considered the future prospects of the deceased. Therefore, the tribunal committed no error on this count and the same requires no interference.

9. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 13 in the facts and circumstances of the case, I feel that the tribunal has committed error. The deceased at the time of the accident was of 31 years of age, his wife was of 29 years of age, his minor son was of not even one year and his widow mother was of 56 years of age. 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 17 should have been applied as per the II Schedule of the M.V. Act. Therefore, the tribunal erred in applying the multiplier of 13 and in the facts of the instant case the multiplier of 17 shall be applicable.

10. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 12% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference on this count. 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 @ 9% pa by the tribunal and the same is not interfered with.

11. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses and loss of estate, whereas, no compensation has been granted towards loss of consortium and the loss of services, which were being rendered by the deceased to the appellants, I feel that the same should have been considered by the tribunal. In this regard compensation towards loss of love and affection is awarded at Rs. 20,000/-; compensation towards funeral expenses is not interfered with and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

12. As far as the contention pertaining to the awarding 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.

13. On the basis of the discussion, the income of the deceased would come to Rs. 27,651 after doubling Rs. 18,434 to Rs. 36,868 and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 18,434 and the annual loss of dependency comes to Rs. 2,21,208 per annum and after applying multiplier of 17 it comes to Rs. 37,60,536/-. Thus, the total loss of dependency comes to Rs. 37,60,536/-. After considering Rs. 1,15,000/-, which is granted towards non pecuniary damages, which were being rendered by the deceased, the total compensation comes out as Rs. 38,75,536/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 38,75,536/- from Rs. 29,10,704/-. The differential amount shall be paid to the appellants by the respondent insurance company with up to date interest @ 7.5% pa. on the enhanced compensation from the date of filing of the petition till final realisation. The enhanced compensation shall be distributed amongst the appellants in the same ratio as granted by the tribunal.

15. With the above directions, the matter is disposed of.