(2009) 04 DEL CK 0227

In the Delhi High Court

Case No : FAO No. 148 of 2003

Smt. Murti Devi and Others APPELLANT

Vs

Delhi Transport Corporation and Others RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0227

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Rajpal Singh, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 19.9.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,63,968/- along with interest @ 9% per annum to the claimants.

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

3. On 4.4.1995 Shri Ramesh Chand was going from village Mitraon to Najafgarh on his motorcycle bearing registration No. DL 4 SM 8821. When the deceased reached near Krishna Farm, Mitraon Road at about 2:00 pm, suddenly a DTC bus bearing registration No. DL 1P 9407 being driven by its driver rashly and negligently came from opposite side and struck against the deceased without any signal or horn. Due to the impact, the deceased alongwith his motorcycle fell down and received serious injuries on his person and later he succumbed to the said injuries.

4. A claim petition was filed on 14.7.1995 and an award was passed on 19.9.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Rajpal Singh, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 759/- 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. 2,559/- per month. 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 31 yrs of age only and would have lived for another 30-40 yrs had he not met with the accident. It was also submitted 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 an year and hence, the deceased would have earned much more in her life span. The counsel submitted that the tribunal has erroneously applied the multiplier of 16 while computing compensation when according to the facts and circumstances of the case multiplier of 27 should have been applied. 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 @ 18% 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. The counsel has relied on following judgments in support of his contentions:

1. 1996 ACJ 581 SC.

2. 2005 ACJ 538 Delhi High Court.

Nobody appeared for the respondents.

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

7. As regards the income, the appellants case is that the deceased was working at Ramesh Nagar Post Office and was earning Rs. 759/- pm from there and besides that he was earning about Rs. 60/- daily from tailoring work. PW-1 Smt. Murti Devi, Appellant No: 1 testified that deceased was her husband and he used to give Rs. 500-400 pm to her for running the household expenses. PW2 proved the salary certificate ex. PW2/A of the deceased and according to it the deceased was earning Rs. 759/- pm. Nothing was brought on record to prove that the deceased was also earning as a tailor. 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. 759/- pm.

8. As regards the future prospects, the tribunal considering that the deceased was in a Govt. job considered future prospects of the deceased. Considering that no dispute in this regard is raised by the respondents, I do not feel inclined to interfere with the same.

5. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier oe 16 in the facts ang circumstances of the case,

I feel that the tribunal has committed error. This case pertains to the year 1995 and at that time II schedule to the Motor Vehicles Act had already been brought om the statute book. The age of the deceased at the time of the accident was 31 years and he is survived by his widow, three children and aged mother. In the facts of the present case, I am of the view that after looking at the age of the claimants and the deceased and after considering the multiplier applicable as per the II Schedule to the MV Act, 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 18% 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 @ 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, loss of estate, 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. 40,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- 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. 1,138.50 after doubling Rs. 759/- to Rs. 1,518/- and after taking the mean of them. After making 1/4th deductions the monthly loss of dependency comes to Rs. 854/- and the annual loss of dependency comes to Rs. 10,246.50 per annum and after applying multiplier of 17 it comes to Rs. 1,74,191/-. Thus, the total loss of dependency comes to Rs. 1,74,191/-. After considering Rs. 1,10,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,84,191/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 2,84,191/- from Rs. 1,63,968/- with interest on the differential amount @ 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 DTC in the same proportion as awarded by the tribunal.

15. With the above direction, the present appeal is disposed of.

