

(2012) 12 DEL CK 0251
In the Delhi High Court
Case No : MAC. App. 835 of 2003

Smt. Prem Rani Passan and Others

APPELLANT

Vs

Shri Ram Avtar and Others

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 12 DEL CK 0251

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : D.K. Rustagi, with Mr. Arpit Bhargava, for the Appellant; S.L. Gupta, with Mr. Ram Ashray, for R-3 and R-6, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—Flt. Lt. Devender Lal Passan suffered fatal injuries in a motor vehicle accident which took place on 15.04.1992. In a Claim Petition filed u/s 166 of the Motor Vehicles Act, 1988 (the Act), the compensation of Rs. 5,03,500/- was awarded in favour of the Appellants. The Appellants have preferred this Appeal for enhancement of compensation. In the absence of any Appeal by the driver, owner, or the Insurance Company; the finding on negligence reached by the Claims Tribunal has attained finality.

2. During inquiry before the Claims Tribunal it was claimed that the deceased Devender Lal Passan was getting a salary of "6385/- per month. If he would not have died in the unfortunate motor vehicle accident, his salary would have been "7120/- w.e.f. 1.01.1993 and Rs. 7604/- w.e.f. 01.01.1994. It was stated that the deceased would have got a gross salary of Rs. 1,66,053/- in the year 1996. It was also claimed that the deceased apart from the salary was entitled to free ration money at the rate of Rs. 14.85 per day. He was also entitled to House Rent Allowance (HRA) in case the residential accommodation is not provided. It was stated that value of the residential accommodation provided to the deceased at the time of his death was Rs. 5,000/- per month.

3. The Claims Tribunal accepted the deceased's salary to be Rs. 6385/- per month, added 50% towards future prospects, deducted one-third towards personal and living expenses, deducted a sum of Rs. 23,000/- towards income tax and applied the multiplier of 9 to compute the loss of dependency as Rs. 4,86,000/-.

4. The Claims Tribunal further awarded a sum of Rs. 10,000/- on account of loss of expectations of life, Rs. 5,000/- towards funeral expenses and Rs. 2,500/- towards loss to estate.

5. The following contentions are raised on behalf of the Appellants:-

(i) The income of the deceased at the time of his death should have been taken into consideration. In any case, the projected income in the year 1996 should have been taken as future prospects.

(ii) No compensation was awarded towards loss of ration money and loss on account of residential accommodation provided to the deceased.

(iii) Deduction towards income tax was on the higher side.

(iv) The compensation awarded towards non pecuniary damages was on lower side.

FUTURE PROSPECTS

6. It is admitted case of the parties that the deceased was getting a salary of Rs. 6385/- per month at the time of his death. It is no longer res integra that the salary of the deceased at the time of his death is starting point for computation of loss of dependency. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it was laid down that the actual income of the deceased at the time of his death is to be taken into account to compute the loss of dependency. It was further stated that if the deceased was under the age of 40 years then an addition of 50% may be made towards future prospects, provided the deceased is in permanent employment or there is some evidence with regard to future prospects. If the deceased is aged between 40-50 years then this augmentation is to be restricted to 30%.

7. In the instant case, the projected income of the deceased in the year 1996 cannot be taken into consideration to award the loss of dependency. Since the deceased was aged about 50 years, that is, 50 years and two months to be precise and was Flt. Lt. with the Indian Air Force, an addition of 30% should have been made towards future prospects in view of Sarla Verma.

8. K.P. Gupta, Senior Gazetted Officer of Air Force Central Account Officer as PW-2 testified that the deceased Devender Lal Passan was entitled to govt. accommodation. His entitlement was for an accommodation of 900 sq. ft. The govt. accommodation is allotted to the officers as per the availability and if an officer is not allotted the official accommodation, he is entitled to HRA, which at the relevant time was 30% of the basic pay. The legal heirs of deceased Flt. Lt.

Devender Lal Passan were, therefore, entitled to an addition of 30% of 3,500/-, that is, Rs. 1050/- towards HRA. Similarly, PW-2's testimony that the deceased was entitled to free ration at the rate of Rs. 14.85 per day was not challenged by the Respondents. Thus, he was entitled to a sum of Rs. 450/- towards free ration. The legal heirs would be entitled to compensation as the ration money was for the benefit of the deceased and his family members. Thus, addition of Rs. 1500/- free of income tax is required to be made in the monthly income of the deceased.

9. I have before me the table of taxation for the Assessment Year 1993-94. In the relevant year, there was deduction of 20% of the salary in case of salaried class towards standard deduction. If amount of Rs. 1500/- is taken as tax free (as stated above) and 20% allowance is made towards standard deduction, there would be liability of Rs. 7500/- per annum only towards income tax as against Rs. 23,000/- made by the Claims Tribunal.

10. One of the deceased's son that is Appellant No. 2 had already joined as Captain in the Indian Army. He was, therefore, not dependent on deceased Devender Lal Passan. Appellants No. 3 and 4 although major were pursuing their studies and were unmarried, they were still to settle in their lives, they would, therefore, be considered to be dependent on the deceased for awarding loss of dependency.

11. Following Sarla Verma the deduction towards personal and living expenses when the number of dependents are three is one-third. Similarly, the appropriate multiplier at the age of 50 years and two months would be 13 as against 9 adopted by the Claims Tribunal.

12. The loss of dependency thus comes to Rs. 9,81,552/- ($6385/- \times 12 - 7500/-$ (income tax) + 18,000/- (HRA) + $30\% \times 2/3 \times 13$).

13. The compensation awarded towards non pecuniary damages was on the lower side. Keeping in view that this accident took place in the year 1992, the Appellants would be entitled to compensation of Rs. 15,000/- towards loss of love and affection and Rs. 5,000/- each towards loss of consortium, loss to estate and funeral expenses.

14. The overall compensation is thus comes to Rs. 10,11,552/- as against Rs. 5,03,500/- awarded by the Claims Tribunal.

15. The enhanced compensation off Rs. 5,08,052/- shall carry interest @ 9% per annum from the date of filing of the Petition till its payment as awarded by the Claims Tribunal.

16. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.

17. The enhanced compensation shall enure for the benefit of the First Appellant, the deceased's widow.

18. This accident took place almost 20 years back, thus, 50% of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest shall be released on deposit. The First Appellant shall be entitled to quarterly interest on the fixed deposit.

19. The Appeal is allowed in above terms. Pending Applications also stand disposed of.