(2009) 04 DEL CK 0305

In the Delhi High Court

Case No : FAO No. 348 of 1998

Smt. Raj and Others — APPELLANT

Vs

Moola Ram and Others — RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0305

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; None, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 30.5.1998 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 2,73,600/- with an interest @ 12% PA for the death of late Sh. Yash Pal due to the motor accident.

2. The brief conspectus of facts is as under:

On 09.2.96, the deceased was driving two wheeler scooter bearing registration No. DAB-4546 and one Sanjay was the pillion rider. Both of them were going towards Bahadurgarh via Main Rohtak Road. At about 9:45PM, when they reached near Haryana Dharam Kanta on the main Rohtak Road, a truck bearing registration No. RNS-4311 which was being driven by R1 came from the opposite direction at a fast speed and it took a sudden turn from the gap in verge without giving any signal or blowing any horn. As a result of which, it struck against the scooter of the deceased and late Sh. Yash Pal received fatal injuries in the accident and Sanjay, the pillion rider received grievous injuries. A claim petition was filed on 11.4.96 and an award was passed on 30.5.98. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. O.P. Mannie, counsel for the appellants claimants urged that the award

passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assailed the said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in assessing the income of the deceased at Rs. 2500/- 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. 3500/- per month. The counsel submitted that the tribunal has erroneously applied the multiplier of 12 while computing compensation when according to the facts and circumstances of the case multiplier of 15 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 41 yrs. of age only and had a bright future. The counsel also submitted that had the deceased not met with his untimely death he would have been earning much more in the near future. It was also argued 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 the value of rupee is dwindling due to high inflation. The counsel further contended that the Tribunal erred in not awarding any compensation towards loss of love & affections, loss of expectation of life, loss to the estate of the deceased, loss of services & loss of consortium to appellant No. 1. 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 @ 24 per annum in place of only 12 per annum.

4. Nobody has been appearing for the respondents.

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

6. The appellants claimants had produced on record Ex. PW5/A-1, Ex. PW5/A-3 and PW-5/A4 which proved that the deceased was a registered medical practitioner in Ayurveda. This is further strengthened by the deposition of PW-2 & PW-3. Apart from the bald statements of PW-2/Ram Chand and PW-3/Om Prakash, no documentary evidence has come on record to prove the income of the deceased. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. The tribunal assessed income of the deceased @ Rs. 2500/- per month. On the assumption that his income from practice must have been at Rs. 2500/- per month. On perusal of the rates of minimum wages as mentioned in Minimum Wages Act for a graduate, the income of the deceased as on the date of accident would have been @ Rs. 2500/- per month.

7. As regards the future prospects I am of the view that time and again, the view of this Court is that whenever income is taken in accordance with the rates of

minimum wages under the Minimum Wages Act, the increase in wages should also be considered. The increase of minimum wages is not akin to the future prospects and the former is considered taking into account the inflation and other economic factors. The tribunal erred in not considering increase in minimum wages and same are allowed to the appellants. After considering the increase in minimum wages, increased income of the deceased would come to Rs. 3750/- per month. (2500+5000) 1/2.

8. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 12 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1996 and at that time II schedule to the Motor Vehicles Act was already brought on the statute book. It has come on record that age of the deceased was 41 years at the time of the accident and he is survived by his widow, two daughters and an 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 that as per the II schedule to the Motor Vehicles Act, the applicable multiplier is 15. I am of the view that the multiplier of 15 shall be applicable.

9. As regards the issue of interest that the rate of interest of 12 p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 24% 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 @ 12% p.a by the tribunal and the same is not interfered with.

10. 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. In this regard compensation towards loss of love and affection is enhanced to Rs. 30,000/-; compensation towards funeral expenses is enhanced to Rs. 10,000/- and compensation towards loss of estate is enhanced to Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

11. As regards compensation for loss of expectation of life and loss of services where were being rendered to the appellants by the deceased during his life time, since the same are not conventional heads of damages, no compensation is awarded towards them.

12. On the basis of the discussion, the income of the deceased would come to Rs. 3750/- after doubling Rs. 2500/- to Rs. 5000/- and after taking the mean of them. After making 1/4th deductions the monthly loss of dependency comes to Rs. 2812.50/- and the annual loss of dependency comes to Rs. 33750/- per annum and after applying multiplier of 15 it comes to Rs. 5,06,250/-. Thus, the total loss of dependency comes to Rs. 5,06,250/-. After considering Rs. 1,00,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 6,06,250/-.

13. In view of the above discussion, the total compensation is enhanced to Rs. 6,06,250/- from Rs. 2,73,600/- with interest @ 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 No. 3 in the same ratio as apportioned by the tribunal.

14. With the above directions, the present appeal is disposed of.

