(2012) 12 DEL CK 0240

In the Delhi High Court

Case No : Mac. App. 772 of 2005

Smt. Roopwati and Others APPELLANT

Vs

Nichhattar Singh and Others RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0240

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

Bench : Single Bench

Advocate : Ashok Mahajan, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 3,10,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Tilak (the deceased), who died in a motor vehicle accident which occurred on 06.02.2002. In the absence of any Appeal by the driver, owner or insurer of the vehicle No. CH-01G-8830 involved in the accident, the finding on negligence has attained finality.

2. During inquiry before the Claims Tribunal, it was claimed that deceased Tilak was working with Sanjay Kumar Mohindra, Shop No. 3246/2, Ram Bazaar, Mori Gate, Delhi who was trading in Spare Motor Parts and he (the deceased) was getting a salary of Rs. 4,500/- per month.

3. In the absence of any documentary evidence, the Claims Tribunal took the minimum wages of a Matriculate (as per the deceased''s qualification); added 50% towards future prospects; deducted 50% towards the personal and living expenses and applied a multiplier of 15 to compute the loss of dependency.

4. It is urged by the learned counsel for the Appellants that they had produced the oral evidence in shape of an affidavit by the Second Appellant regarding the deceased''s employment and his salary which was not rebutted. The Appellants

even took steps to summon the deceased''s employer, but he did not come forward. It is, thus, contended that the deceased''s salary was proved as Rs. 4,500/- per month.

5. I have before me the Trial Court record. In the Claim Petition filed by the Appellants, the name of the employer with his complete address and salary was disclosed. The Second Appellant filed his affidavit Ex. PW-3 testifying that his son was getting a salary of Rs. 4,500/- per month at the time of his death.

6. A perusal of the FIR corroborates PW-3''s testimony to the extent that in the FIR lodged by Sanjay Kumar Mohindra, it was stated by him that he was driving the two-wheeler and his employee Tilak was riding on the pillion seat when the scooter met with an accident. In the circumstances, I would accept PW-3''s testimony with regard to the deceased''s employment and his income.

7. In case of a bachelor, the thumb rule is to deduct 50% towards the personal and living expenses of the deceased, but where the bachelor is survived by his widowed mother and younger siblings, deduction of 1/3rd is made. In the instant case, Appellant No. 2 is deceased''s father. In the circumstances, deduction towards the personal and living expenses would be 50%.

8. The Claims Tribunal applied the multiplier of 15 as per age of the deceased''s mother. It is no longer res integra that the multiplier would be as per the age of the deceased or that of the Claimants whichever is higher (See Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others,).

9. The Appellants would be entitled to an addition of 30% towards inflation as there was no evidence with regard to the future prospects.

10. The loss of dependency comes to Rs. 4,91,400/- (4,500/- + 30% x 1/2 x 12 x 14).

11. The Appellants would be further entitled to a sum of Rs. 25,000/- towards loss of love and affection and Rs. 5,000/- each towards loss to estate and funeral expenses.

12. The overall compensation thus comes to Rs. 5,26,400/-.

13. The enhanced compensation of Rs. 2,16,400/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

14. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks and shall be apportioned amongst Appellants No. 1 and 2 equally.

15. Seventy five percent of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest 25% shall be released on deposit. The Appellants would be entitled to the quarterly interest on the amount held in fixed

deposit.

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

