(2007) 10 DEL CK 0127

In the Delhi High Court

Case No : MAC App. No. 164 of 2005

Smt. Sarbati APPELLANT

Vs

Sh. Kalu Khan and Others RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 10 DEL CK 0127

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Ritu Bhardwaj, for the Respondent

Judgement

Kailash Gambhir, J.—The appellant is primarily aggrieved with the impugned award dated 31.8.2004 passed by the Tribunal on account of deduction of 3/4th of the income of the deceased towards his personal expenses and also wrong application of the multiplier.

2. The appellant is a widowed mother of the deceased Sh. Satpal, who died at the age of 28 years due to injuries sustained on 3.10.2001 in a road accident at about 9.00 a.m. near Gangwa Bus stand within the jurisdiction of Police Station Parbatsar (Nagaur) Rajasthan. The deceased was driving Maruti Car bearing registration No. RJ 21 C 5494 while travelling to Bakrana from Parbatsar, Rajasthan when it collided with a bus bearing registration No. RJ 09 P 1355, driven on the wrong side of the road by Sh. Kalu Khan in a rash and negligent manner.

3. The contention of Sh. O.P. Mannie, counsel for the appellant is that the deceased was only survived by his widowed mother and at the most one half of the personal expenses could have been taken into consideration so as to determine the dependency of the surviving dependent. Counsel for the appellant further contends that the multiplier of 11 has been made applicable by the Tribunal which should have been at least 15 as per the Second Schedule of the

Motor Vehicles Act. Counsel contends that on the date of the accident, age of the dependent mother was about 44 and a half years and this fact can be borne out from the age disclosed by her in the deposition dated 27.1.2004 as a witness in support of her claim petition. In the deposition the appellant has stated her age as 48 years while the date of accident in the present case is 3.10.2001. Based on this position, counsel for the appellant states that the age of dependent mother was not more than 44 and a half years on the date of accident.

4. Per contra, Ms. Ritu Bhardwaj, counsel for the respondent seriously refutes the contention raised by the counsel for the respondent. She states that the respondent has already taken a sympathetic view by not preferring an appeal against the impugned order. Counsel for the respondent further contends that no evidence was led by the appellant to disclose the correct income of the deceased. Counsel for the respondent also contends that as per settled legal position in all such cases where the correct income is not disclosed, resort has been made to the Second Schedule of Section 163-A of the Motor Vehicles Act. As regards multiplier, the contention of the counsel for the respondent is that no age proof was placed on record by the appellant and due to absence of the same, the Court has arrived at the correct multiplier taking into consideration the age of dependent appellant as 48 years.

5. I have heard the learned Counsel for the parties and perused the award. Perusal of the award shows that the Tribunal has deducted half of the income of the deceased towards his personal expenses and again has taken into consideration the annual dependency of single parent at Rs. 14,400/- after deducting the same amount from the annual income and in this manner the Tribunal has taken into consideration 3/4th of the income of the deceased towards personal expenses of the deceased.

6. I do not find any justification in deduction of 3/4th of the income of the deceased towards his personal expenses.

7. However, I am not in agreement with the contention of counsel for the appellant for considering 1/3rd of the income of the deceased towards his personal expenses. The deceased was survived by his mother alone and therefore, half of the income can be taken into consideration towards his personal expenses. The impugned order is accordingly modified to that extent.

8. As regards the multiplier, the perusal of the award shows that the appellant has failed to place on record any document in proof of her age, and therefore, in the absence of the same, the Tribunal has rightly taken into consideration the age of the appellant at 48 years as per the deposition made by her in the evidence. Taking into consideration the said age of the appellant, the multiplier of 15 cannot be applied. For determining the multiplier as per the Second Schedule the age of the deceased in comparison with the age of the dependent whichever is higher is to be taken into consideration, therefore, the finding on the issue of multiplier is upheld.

9. The matter is remitted back to the Tribunal to carry out recalculation in terms of the above position.

10. With these directions appeal stands disposed of.

11. Parties are directed to appear before the Tribunal on 30.11.2007.

