(2007) 10 DEL CK 0128

In the Delhi High Court

Case No : MAC App. 634-37 of 2005

Smt. Seema Walia and Others — APPELLANT

Vs

Sh. R.P. Mishra and Others — RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Citation : (2007) 10 DEL CK 0128

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : B.V.K. Ahluwalia, for the Appellant; Pradeep Gaur, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this appeal, the appellant has sought enhancement of the compensation. The only ground for seeking enhancement is that that the Tribunal has not taken into consideration the salary certificate of the deceased, which as per the counsel for the appellant was duly proved on record. Mr. B.V.K. Ahluwalia, counsel for the appellant contends that the deceased was working as a supervisor with one Mr. Ashok Kumar and was drawing a salary of Rs. 6,500/- on the relevant date of the accident in the present case. Counsel also contends that the salary of the deceased was duly proved by the appellant by producing one Mr.Ashok Kumar who was employer of the deceased. Counsel also contends that the said employer has clearly deposed in his evidence about the employment of the deceased with him and also about the fact of his drawing a salary of Rs. 6,500/- per month. Counsel also contends that the testimony of the said witness remains unimpinged as there was no effective cross-examination on the deposition made by him in his examination-in-chief.

2. Per contra, Mr. Pradeep Gaur, counsel appearing for the respondent contends that the said witness Shri Ashok Kumar miserably failed to prove the income of the deceased and even the employment of the deceased with him. Counsel also contends that the witness failed to produce the books of accounts, income tax

records or other assessment orders in respect of the returns filed by him or even the balance sheet maintained by him. Counsel also contends that the said witness had admitted in his cross-examination that he was an income tax payee and has stated that he could produce the income tax record but still failed to produce any such record before the Tribunal. Counsel, thus, contends that there is no infirmity and perversity in the award passed by the Tribunal as regards, the income of the deceased which was taken according to the Minimum Wages Act and even the future increase was considered by the Tribunal with full multiplier.

3. I have heard learned Counsel for the parties and perused the records. The cross-examination of the said witness Mr.Ashok Kumar clearly shows that he had admitted that he was income tax payee and he had shown the income of Rs. 3 lakhs in the previous assessment year. He also stated that he could produce the relevant income tax records. He also admitted that he maintained his accounts regarding income from his business. In the cross-examination he also stated that he was in possession of the assessment order in respect of the income tax returns filed by him but did not produce the same. He also did not produce statement of accounts filed by him along with income tax return. He also did not produce the carbon copy of the appointment letter but merely produced the photocopy of the appointment letter. The witness also stated that he had regular five employees besides 2-3 employees on daily wages. The cross-examination of the said witness, thus, evidently shows that he was in possession of all the relevant documents regarding the appointment of the deceased and account books, income tax records and assessment order etc. but still failed to produce the same. In the absence of these documents, the adverse inference has rightly been drawn against the appellant. Even the photocopy of the appointment letter issued by the said employer was not signed by the deceased as would be evident from cross-examination of the employer.

4. In the light of the said testimony of Mr.Ashok Kumar who failed to place any documentary evidence or any other cogent material to prove the income of the deceased, I do not find that there is any infirmity or perversity in the finding of the Tribunal in disbelieving the income of the deceased at Rs. 6,500/. In the absence of proper and satisfactory evidence to prove the income of the deceased, the Tribunal has taken resort to the Minimum Wages Act and has also adopted the criteria laid down in Sarla Dixit''s case by taking into consideration the future prospects.

5. The appeal filed by the appellant is devoid of any merits.

6. Dismissed.