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(2010) 11 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 1030 of 1992 (O and M)

Smt. Sona Devi and Others — APPELLANT

Vs

The State of Haryana and Others — RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Citation : (2011) 162 PLR 207

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is for enhancement of claim for compensation arising out of death of a police constable, who was 26 years of age. The claimants were widow and two minor children besides his parents. It was in evidence that the constable was earning Rs. 1,831/- but while determining the compensation, the Tribunal deducted the amount received by the claimants as pension and take the dependency to be Rs. 650/-. It adopted a multiplier of 16 and awarded Rs. 1,30,000/-.

2. The accident has taken place in the year 1991 and the case comes up for consideration after nearly two decades. 1 notice from the records that the matter has been put through Lok Adalat for consideration for settlement and ultimately, the case has come back when the Insurance Company was pleading for adjournment at every time on the ground that they did not have the records and ultimately the matter has come back when the Insurance Company was not prepared to settle on the issue of quantum. The reference to Court by the Lok Adalat has been made in the year 1999 and unfortunately for the claimants, the case comes up for consideration on merits after nearly a decade.

3. A stage has come where public sector undertakings must take a responsible role in their approach to litigation. We have tall statements given by high ranking officials that there is a new litigation policy where the public bodies are sensitized

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to litigate only on matters which are truly contentious and which the parties themselves cannot resolve. The method of determining compensation for persons whose income is less than Rs. 40.000/- obtains certitude through the Schedule-II in Motor Vehicles Act and recently through a judgment of the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , a fairly acceptable formula has been evolved making it easy for Insurance Companies to satisfy the claims on settled legal basis. If we must have institutions dragging their feet and engaging parties in contentious litigations, there can be no end to relieving the Courts of suffocation through bulging dockets. I express this consternation against the Insurance Company only because there is hardly any matter that is left to be adjudicated on issues relating to death where the negligence is established, the income is established on sound documentary proof and the entitlement of the claimants is unexceptional. The increase in compensation will be distributed to the wife and the children. In this case, the Tribunal had erred both on the multiplicand by deducting pension and provident fund payments and in the place of appropriate multiplier. There ought to be a proactive approach by Insurance Companies to settle matters immediately without waiting for the cases to come on their own turn. In this case, I will fault the Insurance Company for not bringing to an end the litigation for 20 years and spuming off overtures of settlement through Lok Adalat. A constable earning Rs. 1,831/- with prospects of an increase in emoluments over his career span, I would take his average income to be Rs. 2,700/- after providing for a 50% increase and would deduct l/4th for personal expenses and take Rs. 2,025/- as the monthly contribution. I will adopt 17 as the multiplier and take the extent of loss of dependency at Rs. 4,13,100/-. I will add Rs. 5,000/- towards loss of consortium to the wife and Rs. 2,500/- to each of the minor children and further add Rs. 5,000/-towards loss to estate and Rs. 2,500/- for funeral expenses. In all, the sum that would become payable would be Rs. 4,30,600/-. The difference in amount of what has already been determined will bear interest at 6% from the date of petition till date of payment.

4. It has become necessary for Lok Adalat to record at least, on matters where there is no settlement in motor accident cases, the respective offer and the counter offer emerging at the final lap of negotiations, without in any way expressing an opinion on why settlement could not be reached.AD Rs have a large role to play in these hard times of increasing delays and expenses of long drawn litigation. If a case is not settled, there is no need to draw any adverse inference but at least when the Court draws up its conclusion and delivers the verdict on what emerges as a simple exercise, the Court shall see, if the parties have acted fairly at the negotiating table. If the ultimate decision by the Court approximates to what was willing to be received by the party but turned down by the other side, it shall be factored for ordering suitable costs. The expression in a judgment, ''there is no direction as to costs'' is getting to be a manner of bidding adieu to a case than the result of a judicial expression of whether a party deserves to be awarded costs or not. Costs must be on a reasonable estimation

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of what the winning party had to cope with, in a long litigious journey and how the losing party has inflicted harm on the other. Cases involving fine treatment of law is a different matter altogether. But open and shut situations where there is no resourcefulness of a hard bargain necessary but only a justice oriented approach called for, Courts shall fix appropriate costs, having due regard to all relevant factors, the unreasonableness of a litigant''s stand, the length litigation, the cost of litigation, the loss ensued to one party and award against the party who is found liable to satisfy the claim. If this case has started as a result of civil wrong, its prolongation this long is the result of a senseless approach and a heartless want of response to the poignant story of a young widow and children claiming compensation for death of their only bread winner.

5. Having regard to the conduct exhibited by the Insurance Company, I will also award Rs. 25,000/- as cost against the Insurance Company. 6. The appeal is allowed to the above extent.

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