(2012) 10 DEL CK 0263

In the Delhi High Court

Case No : MAC. App. 616 of 2005

Smt. Swaran Lata and Others APPELLANT

Vs

Shri Ravat Singh and Others RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:
Income Tax Act, 1961 — Section 88

Citation : (2012) 10 DEL CK 0263

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

Bench : Single Bench

Advocate : Aruna Mehta, for the Appellant; Yashpal Rangi, for R-2 and R-3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellants who are the legal representatives of deceased Sahi Ram Bansal seek enhancement of compensation of Rs. 6,20,000/- awarded for his (Sahi Ram Bansal) death in a motor vehicle accident which occurred on 23.04.1996. In the absence of any Appeal by the driver and the owner, the finding on negligence has attained finality.

2. During inquiry before the Claims Tribunal it was claimed that the deceased Sahi Ram Bansal was in the business of dealing with the sewing machine parts. He had an income of Rs. 7,000/- per month from the said business carried in the name and style of M/s. Bansal Products. He used to deal in shares from which he had an income of Rs. 3,000/- per month. In order to prove that the deceased was carrying on business as stated above, the Appellants proved on record Central Sales Tax Forms issued by the Sales Tax Department and deposited with M/s. Bansal Products as Exs. PW-4/1 to PW-4/12. The Appellants further proved the form of declaration for purchase by registered dealers issued under the Delhi Sales Tax Rules, 1975 as Ex. PW-4/13 to Ex. PW-4/24. The Appellants further proved two office copies of the bills contained in two bill books placed on as Exs. PW-4/25 to PW-4/101. The Appellants claimed that the deceased was a man of

status. He was maintaining a Maruti car; its registration certificate was proved as Ex. PW-1/148. He had two telephones whose bills were proved as Ex. PW-4/137 to Ex. PW-4/147. Thus, although, the deceased''s income was claimed to be Rs. 10,000/- per month i.e. Rs. 1,20,000/- per annum, yet he was not paying any income tax. The Claims Tribunal noticed all these facts and made an assessment of the deceased''s income to be Rs. 60,000/- per month although, the same was much above the taxable limit and awarded a compensation of Rs. 6 lacs towards loss of dependency and Rs. 20,000/- towards loss of love and affection, loss of consortium and funeral expenses.

3. The following contentions are raised on behalf of the Appellants:-

(i) The assessment of the income of the deceased at Rs. 60,000/- per annum was on the lower side. It should have been assessed at least @ Rs. 8,000/- per month.

(ii) No provision was made towards future prospects and inflation although the deceased was only 42 years at the time of his death.

(iii) The compensation awarded towards non-pecuniary damages is on the lower side.

ASSESSMENT OF INCOME

4. During the course of arguments, the learned counsel for the Appellants placed on record handwritten note of a CA stating that if the deceased had gross income of Rs. 1,04,000/- and business expenditure of Rs. 33,100/-, his net income would be Rs. 70,900/-. The tax on income of Rs. 70,000/- would be Rs. 4,635/- and rebate on the savings of Rs. 24,000/- @ 20% would be Rs. 4800/- and thus the income of Rs. 70,900/- would be non taxable.

5. I have before me the rate of income tax for the Assessment Year 1997-98. The rate of tax was 15% for income of Rs. 40,001/- to Rs. 60,000/- and 30% thereafter. Thus, the counsel for the Appellants is not right that net income of Rs. 70,900/- would be non-taxable on savings of Rs. 24,000/-. Although in the sheet filed by the learned counsel for the Appellants net income of Rs. 70,900/- is claimed, yet in view of the fact that there was liability of income tax even after giving a margin of savings u/s 88 of the Income Tax Act as it stood in the AY 1997-98. Thereafter, even though it was established that the deceased was in the business with name and style of M/s. Bansal Products, yet the Claims Tribunal was justified in making an assessment of deceased''s income to be Rs. 60,000/- per annum, particularly when any income beyond Rs. 40,000/- was subject to income tax and the deceased was not paying any income tax.

FUTURE PROSPECTS:-

6. The Appellants did not produce any cogent evidence with regard to future prospects. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, an addition of 30% has to be made towards future prospects when

the deceased is above 40 years and less than 50 years. In Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCA 559 it was held that even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Thus, the Appellants are entitled to an addition of 30% on account of inflation/future prospects.

7. It is proved on record that the Appellant No. 2, the deceased''s son was major. He had just attained the age of majority and was in the process of settling in life. Therefore, he would be considered to be financially dependent on the deceased. Overall there were four dependents. Thus, there should have been deduction of one-fourth towards the personal and living expenses instead of one-third made by the Claims Tribunal. (Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,).

8. At the same time, the liability towards income tax was to be deducted from the deceased''s income in view of the report of the Supreme Court in Sarla Verma. The loss of dependency thus comes to Rs. 7,78,050/- (60,000/- - 3,000/- (income tax) + 30% x3/4x14).

9. This accident took place in the year 1996. In those days a sum of Rs. 15,000/- was being awarded towards loss of love and affection. I would accordingly make a provision of Rs. 15,000/- towards loss of love and affection and Rs. 5,000/- each towards loss of consortium, loss to estate and funeral expenses.

10. The overall compensation thus comes to Rs. 8,08,050/-.

11. Thus, there is an enhancement of Rs. 1,88,050/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

12. The enhanced compensation shall enure for the benefit of the First Appellant.

13. Respondent Haryana Roadways is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

14. Seventy five percent of the enhanced compensation shall be held in fixed deposit in any Nationalized Bank for a period of two years, four years and six years in equal proportion. Rest shall be released on deposit.

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

