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(2009) 04 DEL CK 0188

In the Delhi High Court

Case No : F.A.O. No. 341/99

Smt. Zakiya Shamim and Others — APPELLANT

Vs

Khushi Ram and Others — RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0188

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : J.S. Kanwar, for the Appellant; None, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 13.4.99 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,12,400/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 29.6.94, the deceased Sh. Mansoor Ahmed was travelling in the bus and when it reached near SDM office, the deceased came to the gate to get down from the bus, but at that point of time the driver suddenly sped up and started driving the bus at a high speed in a rash and negligent manner due to which the deceased fell on the road and sustained several injuries. He was taken to GTB Hospital where the doctor declared him brought dead.

4. A claim petition was filed on 18.7.95 and an award was passed on 13.4.99. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. J.S. Kanwar counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs.1382/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 5,000/- per month as tailoring job

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comes under skilled category. The counsel submitted that the tribunal erroneously applied the multiplier of 10 while computing compensation when according to the facts and circumstances of the case, the deceased was 42 years old and multiplier of 15 should have been applied. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, loss of estate, loss of consortium, and only Rs. 2000/- has been awarded towards funeral expenses.

6. Nobody has been appearing for the respondents.

7. I have heard learned Counsel for the appellants and perused the record.

8. The appellants/claimants did not place on record anything regarding the income of the deceased. On account of failure of the appellants to prove the income of the deceased, the tribunal took aid of the Minimum Wages Act in assessing the income of the deceased. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. After considering all these factors, I am of the view that the tribunal not erred in assessing the income of the deceased as per Minimum Wages Act. But erred in assessing the income as notified for an unskilled person instead of skilled person; viz Rs. 1806/- p.m.

9. Furthermore, it has been the consistent view of this court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. A perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

10. Therefore, the tribunal erred in not considering increase in minimum wages, while assessing the income of the deceased and same should be considered while computing compensation towards loss of dependency. Thus taking into account the future prospectus and applying the formula laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the income of the deceased comes to Rs. 2,709/- P.M.

11. The deceased was survived by his wife and 11 kids. Considering this, i feel

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that the tribunal ought to have made deductions to the extent of 1/6. Therefore, the award is modified to the aforesaid extent in this regard. After deducting 1/6th, the net loss of dependency comes to Rs. 2,258/- P.M. 10. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 10 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1994 and at that time II schedule to the Motor Vehicles act was in force on the statute book. In the facts of the present case and after looking at the age of the widow to be 36 years and of the deceased to be 42 years at the time of the accident, I am of the view that the multiplier of 15 should have been applied. Therefore, in the facts of the instant case the multiplier of 15 shall be applicable. Thus applying the multiplier of 15, the compensation comes to Rs.4,06,440/-.

12. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced, I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon?ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 12% pa by the tribunal and the same is not interfered with.

13. On the contention regarding that the tribunal erred in not granting adequate compensation towards loss of love & affection, loss of estate & Consortium, and Rs. 2000/- only towards funeral expenses. In this regard compensation towards loss of love and affection is granted at Rs. 55,000/-; compensation towards funeral expenses is enhanced to Rs. 5,000/- and compensation towards loss of estate is granted to Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

14. On the basis of the discussion, the income of the deceased is assessed to Rs. 1806/- after doubling Rs. 3612/-since minimum wages keeps on increasing with the span of time. By taking the average of both the figures, the amount comes to Rs. 2709/-. After making 1/6th deductions the monthly loss of dependency comes to Rs. 2,258/- and the annual loss of dependency comes to Rs. 27,096/- per annum and after applying multiplier of 15 it comes to Rs. 4,06,440/-. Thus, the total loss of dependency comes to Rs. 4,06,440/-. After considering Rs. 1,20,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 5,26,440/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 5,26,440/- from Rs. 1,12,400/- with interest @ 7.5% per annum on the

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enhanced compensation from the date of filing of the present petition till realisation and the same should be paid to the appellants by the respondent insurance company.

16. Out of the enhanced compensation 45% be paid to the widow of the deceased and remaining be distributed equally amongst the children. The share of the minor children be kept in FDR in a Nationalised Bank till they attain the age of majority.

17. With the above directions, the present appeal is disposed of.

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