(2012) 09 DEL CK 0271

In the Delhi High Court

Case No : MAC. App. No. 128 of 2005

Sujata Tekwani and Others APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0271

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

Bench : Single Bench

Advocate : J.M. Kalia, for the Appellant; J.P.N. Shahi, Advocate for the Respondent No. 1 Insurance Company, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellants who are legal representatives of deceased Anil Kumar Tekwani seek enhancement of compensation of Rs.

10,41,000/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellants for the death of deceased Anil

Kumar Tekwani, who died in a motor vehicle accident, which occurred on 03.05.2003. On appreciation of evidence, the Claims Tribunal found

that the accident was caused on account of rash and negligent driving of tanker No. HR-38-0870 by the Respondent No. 3 who dashed against a

santro car driven by the deceased. It was claimed that the deceased Anil Kumar Tekwani was a self employed person and had an income of Rs.

35,000/- per month. In the absence of any cogent evidence with regard to the deceased''s income and filing of any Income Tax Return, the Claims

Tribunal assessed the deceased''s income to be Rs. 50,000/- per month, added 50% towards future prospects to compute the loss of dependency as Rs. 9,86,000/-. On adding a sum of Rs. 55,000/- towards non-pecuniary damages, an overall compensation of Rs. 10,41,000/- was awarded

in favour of the Appellants.

2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.

3. It is urged by the Learned Counsel for the Appellants that the Appellants examined Sujata Tekwani, the First Appellant as PW1 who deposed

about the deceased''s status and his self employment as an agent for export of garments. The Appellants proved that the deceased was paying rent

of B-246, Lok Vihar, Pitampura @ Rs. 4,200/- per month. His only son was studying in Goodley Nursery School and the deceased was paying

tuition fees @ Rs. 900/- per month. The Claims Tribunal disbelieved the documents Exs. PW1/2 and PW1/3 on the ground that he (the deceased)

was appointed agent on 28.03.2003. In fact, he was appointed agent on 28.03.2002. The Claims Tribunal, therefore, should have relied on these

documents to hold that he received a payment of Rs. 2,95,790/- from D.R. Polymers Pvt. Ltd. apart from the income of Rs. 1,28,345/- from M/s

A.K. Sales. The Claims Tribunal dealt with the issue of quantum of compensation as under:

12. PW 1 Sujata Tekwani testified that her husband was 34 years of age at the time of his death. She proved on record Provisional/Transfer

Certificate Ex PW 1/1 of deceased having passed B. Com (H) from G.D. Salwan College, New Delhi which would show that the date of birth of

the deceased was 05.05.1969. In the Certified Copy of Post Mortem Report of deceased his age was opined to be around 30 years. It, therefore,

clearly brings out that the deceased was about 34 years of age at the time of his death.

13. As regards Income/earning of the deceased, PW1 Sujata Tekwani in her affidavit tendered under order XVIII Rule 4(1) CPC deposed that

her husband was self employed and doing business of garments on Commission basis and attached to various firms/companies for selling their

products. She testified that her husband drew a Commission of Rs. 1,28,345/- during the period from 01,04,02 to 31,03,03 from M/s A.K. Sales,

Karol Bagh, New Delhi, as per Certificate Ex PW1/2; and also earned commission of Rs. 3,12,180/- during the same period from M/s D.R.

Polymers Pvt Ltd Ex PW 1/3. She testified that her husband was earning Rs. 35,000/- per month and was an Income Tax Payee and in this

connection placed on record copy of Pan Number Card Ex PW1/4. PW 3 Puran Singh produced the Ledger Account from his company and

testified to the effect that deceased earned Rs. 2,95,790/- during the period 01.04.02 to 31.03.03.

14. I am afraid evidence of PW 1 Sujata Tekwani and that of PW 3 Puran Singh on the aspect of income or earning of the deceased does not

appear to be credible enough. If the deceased was an Income Tax Payee, no record has been placed or shown on the record about the Returns of

Income filed by the deceased in the years preceding his death. Shri Kalia, Ld counsel for the petitioners urged that the wife of deceased being a

house wife was incapable of making necessary inquiries or laying her hands on the documents concerning the earning/income of her husband. PW1

in her affidavit deposed that she is graduate in Political Science and B.Ed. She is not an illiterate lady and moreover, when a party is in the hand of

an experienced advocate, it is no argument that it was difficult to summon and produce the relevant record from the Income Tax Department.

15. I may state that it is difficult to rely on the documents Ex PW1/2 and Ex PW1/3 since PW3 in his cross examinations testified that deceased

was appointed as an Agent with his company on 28.03.03. In other words, hardly two months prior to his death. It is not clear if the payment of

Rs. 2,95,790/- was made by cheque or cash. No documents have been shown in regard to payment of such amount. No evidence has been led

about the Bank Account of the deceased. There is led no evidence about the exact nature of business of deceased or number of employees etc. It

is in evidence that Santro Car which was involved in the accident did not belong to the deceased. PW 1 testified that her husband was paying Rs.

4200/- per month as rent of the premises where they have been residing but she was unable to substantiate the same by any documentary

evidence.

16. All the same, having regard to the fact that deceased was graduate and self employed as a businessman, it would not be legally inappropriate

to assess the income of deceased as per rates of minimum wages under the Minimum Wage Act applicable in Delhi. To my mind, since the deceased has been cogently shown to be a businessman, it could be safely said that he was earning more then what was prescribed or provided

under the Minimum Wages Act. During the relevant time, annual income of Rs. 50,000/- was exempted from payment of Income Tax and

therefore, I assume that deceased was earning Rs. 50,000/- annually. Reference here can be had to decision in Smt. Asha Gupta, Master Rahul

Gupta and Master Rohit Gupta Vs. Mr. Ramji Lal and The Oriental Insurance Co. Ltd. (MTPCO), , wherein similar facts had arisen for

consideration.

17. Further, it is well settled in making assessment of just and reasonable compensation regard must be had to the prospectus of future increase in

the income or earning of the deceased. Deceased was a young man of about 34 years of age and he would have definitely survived for another 20-

25 years. Having regard to the average longevity of life in India, it could be safely said that his income would have doubled in the future, if not

tripled; and his annual income would have risen to at least Rs. 1,25,000. I, therefore, work out the claim of compensation as under:-

(In Rupees)

Hence:

4. This accident took place on 03.05.2003. In the A.Y. 2005-06 any income beyond Rs. 60,000/- was liable for deduction of Income Tax. The

Claims Tribunal observed that the First Appellant was a graduate in Political Science and B.Ed. She was assisted by an advocate. If the deceased

had an income of Rs. 4,20,000/- as claimed by the Appellants, she could have summoned relevant record from the Income Tax Department to

prove the same. This finding of the Claims Tribunal cannot be faulted. It is true that the letter Ex. PW3/DA through which the deceased was

allegedly appointed as an agent by M/s D.R. Polymers Pvt. Ltd. was dated 28.03.2002 and not 28.03.2003 as observed by the Claims Tribunal,

yet much value cannot be attached to these documents. Such documents could be created at any time. Even deduction of the TDS by document

Ex. PW1/3 was made only on 25.06.2003, that is, after the death of the deceased. Moreover, as observed by the Claims Tribunal the Appellants

did not produce any evidence to prove as to how the amount of Rs. 2,95,790/- was received by the deceased. Thus, in the absence of any

Income Tax Return, the Claims Tribunal rightly discarded these documents.

5. Similarly, the Claims Tribunal declined to believe that the deceased was paying rent @ Rs. 4,200/- per month as neither any rent receipt was

produced nor the landlord was summoned nor any other evidence was produced to show the extent of the tenancy premises or any documentary

evidence with regard to letting. It is not a case where the Appellants were not aware that they were to produce documentary evidence in support

of their claim. The Appellants produced photocopy of a receipt dated 09.12.2002 to prove Appellant No. 2''s admission in Goodley Nursery

School where tuition fees of Rs. 2,700/- for three months and other charges towards admission were paid by the deceased/Appellants in

December, 2002. Thus, the Appellants produced evidence selectively and left gaps.

6. It is not the question of the annual income in the year 2003-04. The deceased was aged 33 years and must have been working and earning for

the past several years.

If he really had an income of over Rs. 4,00,000/- in the year 2003-04, some evidence could have been brought in by the Appellants to prove his

income for the previous years. The Claims Tribunal took an income of Rs. 50,000/- per month and took the future income as Rs. 1,25,000/-.

Since the deceased was a self employed person, addition of only 30% towards inflation was permissible as per the law laid down in Santosh Devi

Vs. National Insurance Company Ltd. and Others, , whereas the Claims Tribunal made an addition of 75%. Practically, an income of about Rs.

70,000/- (after deduction of Income Tax) was taken to compute the loss of dependency if an addition of only 30% is to be made towards inflation

in the absence of any documentary evidence with regard to the payment of Income Tax, the Claims Tribunal was very benevolent in awarding the

compensation on an income of Rs. 87,500/- per annum in the year 2003, which does not call for an interference.

7. The Appeal is devoid of any merit; the same is accordingly dismissed. Pending Applications stand disposed of.

