(2012) 08 DEL CK 0516

In the Delhi High Court

Case No : Mac. App. No. 134 of 2012

Sukhvinder Kaur and Others APPELLANT

Vs

New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0516

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

Bench : Single Bench

Advocate : C.P. Lodwal, for the Appellant; Sameer Nandwani, Advocate for the Respondent No. 1 Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 3,83,000/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) for the death of Avtar Singh who died in a motor vehicle accident which occurred on 17.01.2008. In the absence of any Appeal by the driver, owner or the Insurance Company, the finding on negligence has attained finality.

2. The deceased was working as a helper in M/s. Golden Highway Goods Carriers (Regd.) since 01.09.2007. He met the tragic death in the instant case which is within four months of his employment with the said company. The Claims Tribunal on the basis of the appointment letter accepted the deceased''s salary to be Rs. 4250/-, deducted 50% towards personal and living expenses and applied a multiplier of 14 to compute the loss of dependency. A compensation of Rs. 10,000/- was awarded towards loss of love and affection, Rs. 6,000/- towards funeral expenses and Rs. 10,000/- towards loss to estate.

3. It is urged by the learned counsel for the Appellant that addition of 50% ought to have been made towards future prospects as the deceased was working in a large transport company. On the other hand, the learned counsel for the Respondent Insurance Company argues that in the absence of any evidence with

regard to the future prospects, the Appellants were not entitled to any increase.

4. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided when the victim was having fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma''s judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

5. Thus, in this case, the Appellants would be entitled to an addition of 30% towards inflation.

6. The loss of dependency thus comes to Rs. 4,64,100/-(Rs.4250/- +30% x 1/2 x 12 x 14). I would make an award of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards funeral expenses and loss to estate.

7. Thus, the overall compensation comes to Rs. 5,09,100/-.

8. There is an enhancement of Rs. 1,26,100/- in the compensation awarded which shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment which shall be shared equally between the Appellants. 50% of the enhanced compensation shall be held in Fixed Deposit for a period of three years. Rest shall be released on deposit.

9. The enhanced compensation of Rs. 1,26,100/- along with interest shall be deposited by the Respondent No. 1 New India Assurance Co. Ltd. with the Claims Tribunal within six weeks.

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