(2019) 07 DEL CK 0501

In the Delhi High Court

Case No : MAC.APP. No. 1019 Of 2018, Civil Miscellaneous No. 48093 Of 2018

Sunil Kumar @ Sunil Lakra & Ors	APPELLANT
Vs	
Monu Kumar & Ors (ICICI Lombard General Insurance Co Ltd)	RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Citation : (2019) 07 DEL CK 0501

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Prateek Choudhary, Pankaj Gupta, Suman Bagga

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. This appeal impugns the award of compensation dated 30.10.2017 passed by the learned MACT in Petition No. 386/2017 on the basis of a settlement between the parties, whereby an offer of Rs.10.75 lacs was accepted by the appellants apropos the unfortunate demise of their son in a road accident. He was all of 20 years of age and in the prime of his life. The appellant no.1 i.e. the father of the deceased is stated to be recuperating from an advanced stage of cancer and states that during the aforesaid proceedings, he was not properly advised by his counsel and was not in the best state of mind to have decided for himself. Therefore, he seeks reopening of the case and for remand of the same for decision on merits.

2. The relief is strongly opposed by the learned counsel for the Insurance Company. He submits that there was a statutory offer and sufficient time was given to the appellants to consider the same and accept. The orders of 18.09.2017 and 30.10.2017 read as under:-

"18.09.2017

Present: Sh. Sunil Lakra, father of deceased with Sh. A. C.Jha, Counsel for LRs of deceased.

Sh. Vimal Kumar, proxy counsel for Sh. S. K.

Sharma, Counsel for respondent no. 3 Insurance Company.

IO SI Prem Yadav in person. He is directed to supply copy of DAR to the parties present.

Driver and owner not produced by IO SI Prem Yadav, who has submitted that notice was duly served on them.

Fresh Court notice be issued to the driver and owner and be given dasti to the IO for the next date.

Legal offer has already been filed. Copy given.

Counsel for petitioners seeks time for consideration.

Allowed.

Put up for settlement and further proceedings with the connected matter now on 30.10.2017."

"30.10.2017

Present: Petitioner No. 1 Sh. Sunil Lakra witin Sh. A. C. Jha, counsel for the petitioners.

Respondents No. 1&2 in person with their counsel Sh. Suresh Bharti.

Sh. S. K. Sharma, counsel for the respondent No. 3 Insurance Company.

It is jointly submitted by the counsel for the petitioners and Sh. S. K. Sharma, counsel for the Insurance Company that they want to settle the claim.

Statements of petitioner No. 1, counsel for the petitioners No. 2 & 3 and counsel for respondent No. 3 Insurance Company are recorded separately in this regard.

Petitioner No. 1 Sh. Sunil Lakra has also been examined under Clause 26 of Modified Claims Tribunal Agreed Procedure (MCTAP).

Heard. Statements perused.

I am satisfied that the parties have settled the claim without any inducement, force or coercion.

Vide separate judgment announced today, Award is passed in terms of the statements.

Copy of the Award be given to the parties free of cost.

Copy of the Award be also sent to the Court of concerned Metropolitan Magistrate.

A separate file be prepared for compliance and be put up on 13.12.2017.

File be consigned to Record Room."

3. The appellants, with the assistance of a counsel, had considered the settlement and had accepted the same. The impugned order records as under:-

"6. Legal Offer/reply to DAR was filed by ICICI Lombard General Insurance Company Limited (Respondent No. 3), wherein it is admitted that the offending vehicle i.e. Mahindra Champion No. DL-1L-Q-6008 was insured with it vide Policy No. 3003/A/108106529/00/B00, valid from 20.10.2015 to 19.10.2016, including the date of accident. It did not take any statutory defence and offered to pay Rs. 9,05,952/- as compensation to the petitioners, which was not accepted by them.

7. Pending enquiry, petitioners and Sh. S. K. Sharma, counsel for the respondent No. 3 Insurance Company further negotiated and agreed to settle the claim for Rs. 10,75,000/-. Statements of Petitioner No. 1 Sh. Sunil Kumar @ Sunil Lakra, Sh, A. C. Jha, counsel for the petitioners on behalf of petitioners No. 2 Smt. Kusum & petitioner No. 3(Vis. Sanjana and Sh. S. K. Sharma, counsel for the respondent No. 3 were recorded separately in this regard.

8. Petitioner No. 1 Sh. Sunil Kumar @Sunil Lakra has also been examined under Clause 26 of Modified Claims Tribunal Agreed Procedure (MCTAP).

9. I have heard Sh. A. C. Jha, counsel for the petitioners, Sh. Suresh Bharti, counsel for the respondents No. 1&2 and Sh. S. K. Sharma, counsel for the respondent No. 3. I have carefully perused the record.

10. 1 am satisfied that the parties have settled the claim without any inducement, force or coercion. In view of the statements of the parties, I pass an award in the sum of Rs. 10,75,000/- (Rupees Ten Lacs Seventy Five Thousand Only) as full and final compensation, for death of Sh. Rohit Lakra S/o Sh. Sunil Kumar@Sunil Lakra, in favour of the petitioners and against the respondent No. 3/Insurance Company, who has indemnified Sh. Bhola Ram Mehto, owner of the offending vehicle (Respondent No. 2). Liability of respondent No. 3, being the insurer is joint and several with other respondents."

(emphasis supplied)

4. The learned MACT had specifically examined and satisfied itself to the fact that the parties had settled the claim without any inducement, force or coercion. There is nothing on the record to indicate or suggest that the appellants were under compulsion to accept the offer or had been misled by their lawyeer. There is no notice issued to the earlier advocate, who represented the appellants before the learned Tribunal, nor was any complaint made to the Bar Council of Delhi in this regard.

5. In the circumstances, the aforesaid contention is untenable and is accordingly rejected.

6. On 06.12.2017, the appellants had moved an application before the learned Tribunal seeking recall of the impugned order dated 13.10.2017 on the ground that the learned Tribunal had not granted them sufficient time to the claimants to consider the offer. The application, inter alia, reads as under:-

"7. That as per Hon'ble High Court order the justified amount was not offer (sic) by the insurance company but in hurry (sic) manner the father of (sic) deceased signed on the paper as a compromise. It is pertinent to mentioned (sic) here there was no time given by the predecessor court for the consideration with his family and the mother of deceased was not present before the court on the day of compromise."

7. Quite clearly, the stand of the appellants ranges from their counsel forcing the appellants to accept the offer to the Court not granting them due time to consider the same. The appellant no.1's statement apropos acceptance of the settlement amount was recorded on 30.10.2017, which reads as under:-

" My son Sh. Rohil Kaira had died in a vehicular accident on 31.10.2015 at about 12.12 pm at Mundka to Peera Garhi Road, Nangloi Flyover, Nangloi, Delhi, involving Mahindra Champion No. DL-1L-Q-6008, driven by respondent No. 1 Monu Kumar. Besides me, my wife and adult daughter are also petitioners in this case. My deceased son was unmarried. I have brought my Aadhaar Card, as proof of identity and its photocopy is Ex.C-1 (OSR). I have also brought Aadhdar Card of my wife Smt. Kusum and its photocopy is Ex. C-2 (OSR).

Without any inducement, force and coercion, I voluntarily accept the offer made by the counsel for the Insurance Company to settle our claim for a sum of Rs. 10,75,000/- (Rupees Ten Lacs Seventy Rue Thousand Only) as full and final compensation for death my son Sh. Rohit Lakra in the accident.

Award may kindly be passed in terms of the settlement."

8. The learned counsel for the Insurance Company submits that initial offer of Rs. 9,05,952/- was considered by the appellants and the learned Tribunal too, rejected it but the subsequent enhanced offer of Rs.10.75 lacs was accepted by the appellants without coercion.

9. In view of the above, no ground is made out for interference in the aforesaid order.

10. Accordingly, the appeal, alongwith pending application, is dismissed.

