(2012) 12 DEL CK 0362

In the Delhi High Court

Case No : MAC. APP. 646-648 of 2005

Surinder Kaur Chhabra and Others APPELLANT

Vs

Kusum and Others RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : (2013) 1 ACC 414

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; L.K. Tyagi, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 11,10,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Ajit Singh Chhabra who died in a motor vehicle accident which occurred on 14.6.1997. In the Claim Petition filed by the Appellants, it was claimed that the deceased was a government contractor, promoter and dealer of real estate. He had an income of about Rs. 4,50,000/-. Thus, a compensation of Rs. 30,00,000/- was claimed by the legal representatives of the deceased.

2. During inquiry before the Claims Tribunal, the First Appellant filed her affidavit by way of her evidence. Apart from deposing on the factum of negligence on the part of the driver of truck No. MBD-8570, the First Appellant Surinder Kaur Chhabra testified that her husband was working as government contractor, property dealer, promoter and real estate developer. He had an income of Rs. 4,00,000/- per annum. He was assessed to Income Tax. She testified that her husband''s Income Tax papers were not available. She deposed that he used to give her Rs. 20,000/- per month for household expenses. Her children, that is, Appellants No. 2 and 3 were studying in Father Agnel School, Gautam Nagar. A sum of Rs. 2,000/- was being paid as the tuition fee for the children. She

testified that both the children were getting swimming coaching at the Lodhi Hotel swimming pool. They owned two cars, a Maruti Omni and a Premier NE. She went on to add that her husband was a partner in M/s. Chhabra Constructions. Subsequently, he worked for and on behalf of R.S. Avtar Singh and Co., Engineers and Contractors and carried out various projects. She deposed that the deceased was having a bank account with New Bank of India in the name of Sunder Construction Co.. Some receipts regarding deposit of certain amount (which relate to the year 1990-92, that is, much after the accident) were placed on record as Mark ''B''. The First Appellant testified that they were residing in a rented house in Defence Colony and paying a rent of Rs. 10,000/- per month.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of the rash and negligent driving of offending truck No. MBD-8570 by its driver Respondent No. 2.

4. The finding on negligence is not challenged by the driver, owner or the Insurance Company by filing any Appeal/Cross-Appeal; thus, the same has attained finality.

5. With regard to the quantum of compensation, the Claims Tribunal assumed the deceased''s income from the status which he and his family was enjoying to be Rs. 6,000/- per month. The Claims Tribunal relied on the judgment of the Allahabad High Court in Oriental Insurance Company Ltd. v. Bhupender Kaur & Ors., (2003) 2 ACC 34, wherein it was held that non-payment of Income Tax cannot rule out the possibility of the income of the deceased as claimed by his wife and if there was any default under the provisions of the Income Tax Act that would have entailed penal consequences. Thus, the Claims Tribunal took the deceased''s income to be Rs. 6,000/- per month which was more than the taxable limit of Rs. 40,000/- per annum, deducted 1/3rd towards the personal and living expenses and awarded an overall compensation of Rs. 11,10,000/- as stated earlier.

6. Ms. Suman Bagga, Advocate for the Appellants has very painstakingly taken me through the documents adduced before the Claims Tribunal as also by way of additional evidence before this Court and has made an attempt to convince me that although there was no evidence in the shape of Income Tax Return filed by the deceased either on the date of the accident or earlier at any point of time (although he was aged 40 years at the time of the accident), yet there is sufficient material to assess the income of deceased to be at least Rs. 20,000/- per month.

7. Mark ''B'' are some receipts regarding deposit of some amount in the name of Ajit Singh Chhabra or in the account of Sunder Construction during the period 1990-92. The same, however do not lead us anywhere as it cannot be made out as to for what purpose this money was deposited. Moreover, that was 6-7 years before the accident. By way of additional evidence, the Appellants examined

A1W1 Ashok Mehta, who was a friend of the deceased. He tried to prove a Partnership Deed dated 01.04.1990 (Ex. A1W1/1) to carry out construction at Plot No. 5, Behra Enclave. In this Partnership Deed, deceased Ajit Singh Chhabra had a share of 28%. In cross-examination A1W1 admitted that the papers on which the Partnership Deed was written were purchased on different dates from different stamp vendors. Thus, it is very suspicious if such a Partnership Deed was entered into. A1W2 Anil Kumar was produced to prove that a payment of Rs. 25,01,408/- was made to M/s. Sunder Construction Co. after retaining 4% margin. In the certificate A1W2/1, it is mentioned that the firm Sunder Construction Company, Tapi Road, Harimaya, Bhusawal (Maharashtra) had executed the construction of administrative building for ONGC at Panvel, New Bombay. The work was carried out in the year 1986-1990 and this payment was made after deducting 4% profit margin by M/s. R.S. Avtar Singh and Company. A1W2 Anil Kumar is an employee of M/s. R.S. Avtar Singh and Company. He joined this company only in February, 2003. Thus, he could have never known Sunder Construction Co. or its connection with deceased Ajit Singh Chhabra. In cross-examination, the witness deposed that there were 11 partners of M/s. R.S. Avtar Singh and Company. Admittedly, one or the other partner could have known deceased Ajit Singh Chhabra and could have been produced as a witness (Anil Kumar was produced only by way of additional evidence during the Appeal). Even if this document and the ledger Ex. A1W2/2 is taken into account, it would simply show that some construction work during the period 1986-1990 was carried out by Sunder Construction Co. for this amount. It is difficult to fathom as to what was the profit in this amount. As per A1W2, the profit of the amount of contract was only 4%. If the margin of profit is taken as 5 to 10%, the profit would be somewhere between Rs. 1.25 lakhs to Rs. 2.5 lakhs in a period of five years.

8. The learned counsel for the Appellants urges that the First Appellant''s testimony that the deceased used to give her Rs. 20,000/- per month as household expenses was not challenged in cross-examination. It is true that there was no cross-examination to PW1''s testimony in this regard, but simply on the basis of Appellant''s oral evidence an income of Rs. 20,000/- cannot be accepted.

9. There is evidence in the shape of the receipt regarding deposit of school fee in Father Angel School, Gautam Nagar, New Delhi. The receipt Ex. PW1/6 shows that a sum of Rs. 2,415/-, which included a payment of Rs. 730/- towards annual charges, was paid quarterly per child. Thus, it can be taken note of that the school fee @ approximately Rs. 700/- per month per child was being paid. As held by the Claims Tribunal, it was also established that the deceased owned a Maruti Omni and a Premier NE 118. It was further established that the Appellants were staying in a house A3/42, Ground Floor, Defence Colony. On the basis of the evidence produced only a guess work can be made about the deceased''s income because no evidence was produced to prove that the deceased was paying any Income Tax. At the same time, if there is clinching evidence to prove the

deceased''s income, the legal representatives cannot be denied compensation simply on the ground that the deceased was not paying any Income Tax. The Claims Tribunal made an assessment of Rs. 6,000/-. Taking into account the facts narrated above, it would be reasonable to hold that the deceased was having an income of at least Rs. 12,000/- per month or Rs. 1,44,000/- per annum. The limit of non-taxable income was Rs. 40,000/- in the year 1998-99.

10. There was no evidence with regard to the deceased''s future prospects. Thus, there would be an addition of 30% towards inflation on the basis of the report in Santosh Devi Vs. National Insurance Company Ltd. and Others, . During inquiry, it was established that the deceased was born on 04.06.1957; thus he was aged 40 years and ten days on the date of the accident. There was three dependents and there was a liability of Income Tax of Rs. 18,000/- on an income of Rs. 1,44,000/-. Following Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the loss of dependency would come to Rs. 16,38,000/- (Rs. 12,000/- x 12 = Rs. 1,44,000/- - 18,000/- (Income Tax) + 30% x 2/3 x 15).

11. The Claims Tribunal awarded a sum of Rs. 20,000/- towards loss of consortium and loss of love and affection. I would make a provision of Rs. 20,000/- towards loss of love and affection and Rs. 10,000/- towards funeral expenses and Rs. 5,000/- each towards loss of consortium and loss to estate. The overall compensation thus comes to Rs. 16,78,000/-.

12. Accordingly, there is an enhancement of Rs. 5,68,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. 25% of the enhanced compensation shall be payable to each of the Appellants No. 2 and 3, rest 50% shall enure for the benefit of the First Appellant.

13. This accident took place in the year 1997. 75% of the enhanced compensation shall be held in the fixed deposit in a nationalised bank for a period of three years. Rest shall be released on deposit. The Appellants shall be entitled to quarterly interest on the amount held in fixed deposit.

14. The Respondent No. 3 Oriental Insurance Company Ltd. is directed to deposit the enhanced amount of Rs. 5,68,000/- along with interest with the Claims Tribunal within six weeks.

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