(2012) 10 DEL CK 0067

In the Delhi High Court

Case No : MAC. App. 187 of 2012

Tata AIG General Insurance Company Ltd. APPELLANT

Vs

Smt. Shoshi Devi and Others RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0067

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

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Dilip Singh, Adv for R-1 to R-7, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The learned counsel for the Appellant states that there is no dispute with regard to Appellant''s liability as there is no breach of the terms and conditions of the policy. His request for dispensing with service of Respondent No. 8, who was the driver of the offending vehicle is allowed. The Appeal is for reduction of compensation of Rs. 9,05,784/- awarded for the death of Sanjay Kumar @ Sanjeev Kumar who was died in a motor vehicle accident which occurred on 26.12.2008.

2. The Appellant Insurance Company does not challenge the finding on negligence; the same, therefore, has attained finality.

3. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a Labour Supervisor in M/s. Nitco Roadways Pvt. Ltd., DBG Road, Karol Bagh, New Delhi and was earning Rs. 12,000/- per month. The Claimants failed to prove any salary certificate or examine any witness from the employer to prove the employment or the salary of the deceased.

4. The Claims Tribunal took the minimum wages of a skilled worker; added 50% towards inflation; deducted one-fourth towards personal and living expenses (as the number of dependents were six); applied the multiplier of 17 as per the age

of the deceased to compute the loss of dependency as Rs. 8,45,784/-. The Claims Tribunal further awarded a sum of Rs. 60,000/-towards non pecuniary damages.

5. It is urged by the learned counsel for the Appellant that there was no evidence with regard to deceased''s future prospects. Thus, only an addition of 30% could have been made on account of inflation.

6. On the other hand, it is stated by the learned counsel for the Claimants that the compensation awarded is just and reasonable.

7. I am in agreement with the learned counsel for the Appellant that in the absence of any evidence with regard to future prospects only an addition of 30% towards inflation should have been made in the deceased''s income on the basis of the ratio in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

8. The loss of dependency thus comes to Rs. 7,32,548/- (3683/- + 30% x 3/4 x 12 x 17).

9. On adding a sum of Rs. 60,000/- towards non pecuniary damages, as awarded by the Claims Tribunal, the overall compensation comes to Rs. 7,92,548/- as against 9,05,784/- awarded by the Claims Tribunal.

10. The excess amount of Rs. 1,13,236/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

11. The compensation awarded to the Claimants shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.

12. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

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