
(2014) 03 DEL CK 0296
In the Delhi High Court
Case No : MAC. App. No. 516/2006

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sharda and Others

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 3 ACC 316

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Pankaj Seth, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

Suresh Kait, J.

MAC. APP. No. 516/2006

1. The present appeal has been filed by the appellant/Insurance Company challenging the impugned award dated 16.03.2006, whereby the learned Tribunal had granted compensation for an amount of Rs. 4,06,680/- with interest at the rate of 6% per annum from the date of filing of the petition till realization of the amount. Learned counsel appearing on behalf of the appellant/Insurance Company submits that while calculating the loss of dependency, the learned Tribunal had deducted one-third of the income of the deceased towards personal expenses and keeping in mind the Second Schedule of the Motor Vehicles Act, 1988, applied the multiplier of 16 as the age of the deceased was 20 years on the date of the accident.

2. He further submits that at the time of the accident, the deceased was aged 20 years. He was a bachelor, and parents were dependent upon him. Therefore, keeping in view the settled law, one-half should have been deducted from the income of the deceased towards personal expenses.

3. I note, service was effected upon respondent nos. 1 and 2, however, none

appeared on their behalf.

4. As regards the issue of multiplier is concerned, the same has been dealt with by this Court in the case of Mohd. Hasnain & Ors. Vs. Jagram Meena & Ors. bearing MAC. APP. No. 152/2014, decided on 24.03.2014, wherein held as under:-

21. The maximum value of the multiplier is fixed at "18", which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in Trilok Chandra, introduced a structural change by increasing the numerical value of multiplier from "16" to "18", whereas it had been fixed at "16" as per Susamma Thomas. Specifically, there was no variation in respect of fundamental premise of "multiplier method" as held in Susamma Thomas. In Trilok Chandra, the apex court has taken the second schedule as a guiding factor.

23. Significantly, the Apex Court in the case of Reshma Kumari and M. Nag Pal has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to "15" the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above "15" years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never considered as a factor. Finally, in the assessment of dependency, the courts/tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.

5. Therefore, keeping in mind the view taken by this Court in the aforementioned case and the facts and circumstances of this case, I do not find any substance in the submission of the learned counsel for the appellant/Insurance Company on this issue.

6. So far as the issue of deduction towards personal expenses is concerned, admittedly, the deceased was aged 20 years on the date of the accident. He was unmarried and left behind his parents. Therefore, considering the facts of the case, the learned Tribunal ought to have deducted one-half of the income of the deceased towards personal expenses instead of one-third.

7. I note, the deceased on the date of accident was 20 years of age. He was unmarried and left behind his parents. His monthly income has been assessed as

Rs. 3,050/- as per the minimum wages applicable to an unskilled person on the date of accident, i.e., 23.03.2005. Despite the above facts, Ld. Tribunal failed to add any amount in his actual income towards future prospects.

8. The appellate court has to see whether the compensation granted is just and fair to the loss or injury received by the deceased/injured; as the case may be.

9. As far as the issue of future prospects is concerned, this issue has been dealt by this court in the case bearing MACA No. 846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors., decided on 30.09.2013 while relying upon the dictum of Rajesh and Others Vs. Rajbir Singh and Others, .

10. Therefore, while reducing the personal expenses from 1/3rd to 1/2, keeping the age of the deceased as 20 years on the date of accident, I add 50% in his actual income towards future prospects.

11. Consequently, the compensation comes as under:

Sl.No.

Heads of Compensation

Compensation granted by Id. Tribunal

Compensation granted by this Court

1.

Loss of dependency

Rs. 3,91,680/-

Rs. 4,39,200/-

2.

Loss of love and affection

Rs. 10,000/-

Rs. 10,000

3.

For funeral expenses

Rs. 5,000/-

Rs. 5,000/-

TOTAL

Rs. 4,06,680/-

Rs. 4,54,200/-

Accordingly, the compensation is assessed as Rs. 4,54,200/-.

12. Resultantly, an amount of Rs. 47,520/- (Rs. 4,54,200/- -Rs. 4,06,680/-) is enhanced.

13. The enhanced amount shall carry interest @ 6% per annum from the date of filing of the claim petition till its realization.

14. Accordingly, appellant/insurance company is directed to deposit the enhanced amount with up-to-date interest accrued thereon with the Registrar General of this Court within a period of five weeks from today, failing which, respondents/claimants shall be entitled for penal interest @ 12% per annum on account of delayed payment.

15. On deposit, the Registrar General is directed to release the amount in favour of the respondents/claimants in terms of the award dated 16.03.2006 passed by the learned Tribunal on taking steps by them. In view of the above, the appeal is partially allowed.

CM No. 8498/2006 (for stay)

With the disposal of the appeal itself, this application has become infructuous. The same is accordingly disposed of.