(2010) 03 DEL CK 0320

In the Delhi High Court

Case No : MAC. App. No. 67 of 2005

The Oriental Insurance Co.Ltd. APPELLANT

Vs

Kulwant Kaur and Others RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 166A

Citation : (2010) 03 DEL CK 0320

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Manjusha Wadhwa, along with Mr. Anil Nagpal, Administrative Officer, OIC, D.O.-23, New Delhi, for the Appellant; Sanjay Bhardwaj, along with R-1 to 3, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.4,55,000/- has been awarded to claimants/respondents No.1 to 4. The appellant is seeking reduction of the award amount.

2. The accident dated 31st May, 1994 resulted in the death of Balbir Singh. The deceased was survived by his widow, one son, one daughter and mother who filed the claim petition before the Claims Tribunal.

3. The deceased was 34 years old at the time of the accident and was holding a Diploma in Mechanics from ITI, Delhi. The deceased was working as a mechanist in BECO Engineering Company (a division of Mukand Ltd., Balabgarh) at a monthly salary of Rs.3,300/- per month. However, the learned Tribunal disregarded the said income and took the minimum wages of Rs.2,150/-, added 50% towards increase in minimum wages due to inflation and rise in priced index, deducted 1/3rd towards personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.4,38,600/-.

Rs.10,000/- has been awarded towards loss of consortium, loss of love and affection and loss of estate and Rs.6,000/- has been awarded towards funeral expenses. The compensation awarded is Rs.4,55,000/-.

4. The only ground urged by the learned counsel for the appellant at the time of hearing of this appeal is that the claim petition should not have been converted from Section 166 of the Motor Vehicles Act to Section 163A of the Motor Vehicles Act, 1988. In the alternative, it is submitted that increase in minimum wages due to inflation and rise in price index should not have been taken into consideration.

5. The learned counsel for claimants/respondents No.1 to 4, in reply, submit that the deceased was earning Rs.3,300/- per month which was proved by the statement of witnesses on record and the income of the deceased should have been taken as Rs.3,300/- per month. The learned counsel further points out that the appropriate deduction towards personal expenses of the deceased in this case is 1/4th according to the judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, whereas the learned Tribunal has deducted 1/3rd towards the personal expenses of the deceased. It is also pointed out that the amount awarded by the Claims Tribunal towards loss of consortium, loss of love and affection and loss of estate is on a lower side.

6. The learned counsel for the appellant, in rejoinder, submits that the multiplier is liable to be reduced from 17 to 16 in terms of the judgment of the Hon''ble Supreme Court in the case of Sarla Verma (Supra).

7. Taking the income of the deceased as Rs.3,300/- per month, deducting 1/4th towards the personal expenses and applying the multiplier of 16, the loss of dependency is computed to be Rs.4,75,200 (Rs.3,300 x 3/4 x 12 x 16). Adding Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.6,000/- towards funeral expenses, the total compensation is computed to be Rs.5,11,200/- (Rs.4,75,200 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.6,000). The award, therefore, warrants enhancement. However, since the claimants have not filed the cross-objections, no further order is required to be passed in this regard.

8. There is no infirmity in the award of the learned Tribunal, which is upheld.

9. The appellant has deposited a sum of Rs.3,07,023/- with the learned Tribunal which has been released to the claimants in terms of the order dated 6th April, 2005 of this Court. The balance amount of Rs.5,65,218/- has been deposited with the UCO Bank on 3rd March, 2010 in terms of the order dated 2nd December, 2009.

10. The learned counsel for claimants/respondents No.1 to 4 submit that respondent No.4 has expired and her rights have devolved upon respondents No.1 to 3 who are already on record. Respondent No.4 is substituted with respondents No.1 to 3.

11. UCO Bank is directed to release a sum of Rs.25,218/- to respondent No.1, Rs.20,000/- to respondent No.2 and Rs.20,000/- to respondent No.3 by transferring the said amount to their respective Saving Bank Account.

12. The remaining amount of Rs.5,00,000/- be kept in fixed deposit in the following manner:-

(i) Fixed deposit for Rs.50,000/- in the name of respondent No.3 for a period of six months.

(ii) Fixed deposit for Rs.50,000/- in the name of respondent No.2 for a period of one year.

(iii) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of one and a half years.

(iv) Fixed deposit for Rs.50,000/- in the name of respondent No.3 for a period of two years.

(v) Fixed deposit for Rs.50,000/- in the name of respondent No.2 for a period of two and a half years.

(vi) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of three years.

(vii) Fixed deposit for Rs.50,000/- in the name of respondent No.3 for a period of three and a half years.

(viii) Fixed deposit for Rs.50,000/- in the name of respondent No.2 for a period of four years.

(ix) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of four and a half years.

(x) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of five years.

13. The expired cheques lying with the Claims Tribunal be released to the appellant within four weeks.

14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of respondents No.1 to 3.

15. Withdrawal from the aforesaid account shall be permitted to respondents No.1 to 3 after due verification and the Bank shall issue photo Identity Card to respondents No.1 to 3 to facilitate identity.

16. No cheque book be issued to respondents No.1 to 3 without the permission of this Court.

17. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the

appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of respondents No.1 to 3, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondents No.1 to 3.

21. Respondents No.1 to 3 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

22. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

23. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.