(2012) 10 DEL CK 0243

In the Delhi High Court

Case No : MAC APP 1024 of 2011

The Oriental Insurance Company Ltd. APPELLANT

Vs

Som Lata and Others RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0243

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

Bench : Single Bench

Advocate : J.P.N. Shahi, for the Appellant; Anshuman Bal, for R-1 and R-5 and Ms. Anupma Kaul, for R-6 and R-7, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 10,46,400/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 5 for the death of Suresh Kumar who died in a motor vehicle accident which occurred on 27.11.2009. The following contentions are raised on behalf of the Appellant:-

(i) There was no evidence with regard to deceased''s future prospects. Even then, the Claims Tribunal made an addition of 50% towards future prospects.

(ii) The compensation of Rs. 1,25,000/- towards loss of love and affection is on the higher side and only a nominal sum is awarded towards non-pecuniary damages in case of fatal accidents.

2. During inquiry before the Claims Tribunal it was claimed that the deceased Suresh Kumar was in private service and was earning Rs. 8,000/- per month. In the absence of any evidence with regard to Suresh Kumar''s employment or his income, the Claims Tribunal adopted the minimum wages of unskilled worker to compute the loss of dependency. Since there was no evidence that the deceased was doing a skilled job, it was appropriate to take minimum wages of unskilled worker to compute the loss of dependency. Admittedly, there was no evidence

with regard to decease''s future prospects. The Claims Tribunal relied on Narender Bishal & Anr. v. Ramit Singh & Ors., MAC APP. 1007-08/2006 decided on 20.02.2008 and granted 50% increase on account of inflation.

3. In the absence of any evidence with regard to deceased''s future prospects addition of 50% was not justified, rather there could be an addition of 30% on the basis of latest report of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, ;

4. The loss of dependency thus comes to Rs. 6,93,751/- (3953/- + 30% x ? x 12 x 15).

5. The Claims Tribunal awarded a compensation of Rs. 1,25,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. When full compensation is awarded towards loss of dependency, only a nominal sum is awarded towards loss of love and affection. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head from Rs. 1,25,000/- to Rs. 25,000/- only.

6. On making further addition of Rs. 10,000/- each towards loss of estate, loss of consortium and funeral expenses, the overall compensation comes to Rs. 7,48,751/- as against Rs. 10,46,000/- awarded by the Claims Tribunal.

7. Thus there is reduction of Rs. 2,97,249/- in the compensation award.

8. The excess amount of Rs. 2,97,249/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

9. The compensation awarded shall be released/held in fixed deposit in favour of Respondents No. 1 to 5 (the Claimants) in terms of the order passed by the Claims Tribunal.

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

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

