(2012) 03 DEL CK 0273

In the Delhi High Court

Case No : Mac. APP. 578 of 2008

United India Insurance Co. Ltd. APPELLANT

Vs

Bhoodev Prasad and Others RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:
Evidence Act, 1872 — Section 167

Citation : (2012) 188 DLT 587 : (2012) 3 TAC 774

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

Bench : Single Bench

Advocate : S.L. Gupta and Mr. Ram Ashray, for the Appellant;

Final Decision : Dismissed

Judgement

J.R. Midha

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 9,37,000/- has been awarded to claimants/respondents No. 1 and 2. The appellant seeks reduction of the award amount. The accident dated 29th February, 2004 resulted in the death of Neeraj Kumar. The deceased was survived by his parents aged 54 and 57 years respectively who filed the claim petition before the Claims Tribunal. The deceased was aged 24 years at the time of the accident and was unmarried. The deceased was doing civil engineering from G.P. Pant Polytechnic, New Delhi and was in 6th semester. The mark sheets of the engineering course were proved as Ex.PW-2/2 to Ex.PW-2/5. The deceased as also selected for training in Delhi Metro Rail Corporation. The identity card and letter were proved as Ex.PW-2/6 and Ex.PW-2/7. The deceased was simultaneously doing a part-time job with M/s B.N. Enterprises and M/s M.R.S. Bhaskar, earning Rs. 8,500/- per month. The proprietor of M/s B.N. Enterprises and M/s M.R.S. Bhaskar appeared in the witness box as PW-3 and PW-4 to prove the part-time income of the deceased.

2. The Claims Tribunal took the earning capacity of the deceased to be Rs.

20,000/- per month after finishing the course of civil engineering. However, the Claims Tribunal reduced the said amount by taking the average of Rs. 8,500/- and Rs. 20,000/- . The income of the deceased for computation of compensation was taken as Rs. 14,250/- [(Rs. 20,000 + Rs. 8,500)/2]. The Claims Tribunal deducted 1/3rd towards personal expenses of the deceased and applied the multiplier of 8 to compute the loss of dependency at Rs. 9,12,000/- . Rs. 25,000/- was awarded towards loss of love and affection and funeral expenses. The total compensation awarded was Rs. 9,37,000/- .

3. The learned counsel for the appellant has urged following two grounds at the time of hearing of this appeal:-

(i) The income of the deceased has not been proved.

(ii) The personal expenses of the deceased be reduced from 1/3rd to 1/2 since the deceased was unmarried.

4. With respect to the first contention, this Court is of the view that there is no infirmity in the findings of the Claims Tribunal to take the income of the deceased as Rs. 14,250/- . In Ram Chand Joshi v. New India Assurance Co. Ltd., Mac. APP. Nos. 212-213/2006 decided on 20th January, 2010 and New India Assurance Co. Ltd. Vs. Ganga Devi and Others, this Court has held that the income of a student of a professional course should be taken according to his earning capacity after completing the course. The deceased in the present case after completing the engineering the course would certainly have earned Rs. 14,250/- per month. The finding of the Claims Tribunal in this regard is, therefore, upheld.

5. There is merit in the second contention of learned counsel for the appellant with respect to deduction of personal expenses. Since the deceased was unmarried, the appropriate deduction towards the personal expenses should be 1/2 whereas the Claims Tribunal has taken the personal expenses as 1/3rd. The Claims Tribunal has applied the multiplier of 8 according to the age of the father who was 57 years at that time. However, since the mother of the deceased was aged 54 years, the Claims Tribunal ought to have applied the multiplier of 11 according to the age of the mother.

6. Taking the income of the deceased as Rs. 14,250/- , deducting 1/2 towards personal expenses and applying the multiplier of 11, the loss of dependency is computed to be Rs. 9,40,500/- . Applying the principles laid down in Section 167 of the Indian Evidence Act, the award of Rs. 9,37,000/- by the Claims Tribunal is upheld for the reasons stated above as there is sufficient evidence on record to justify the compensation awarded by the learned Tribunal.

7. For the aforesaid reasons, the appeal is dismissed.

8. The statutory amount of Rs. 25,000/- be refunded back to the appellant through counsel within four weeks.

9. LCR be returned back forthwith. Copy of this judgment be sent to respondent

Nos.1 and 2 as well as their counsel.

