(2012) 04 DEL CK 0074

In the Delhi High Court

Case No : MAC. APP. No. 1051 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

Buchiya Devi and Others RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0074

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

Bench : Single Bench

Advocate : Ravinder Zadoo, for the Appellant; Kundan Kumar Lal, Advocate for Respondents No. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—Since there is no breach of the policy conditions, service of Respondents No.6 and 7 is dispensed with. The Appeal is for reduction of compensation of Rs. 35,01,369/- awarded for the death of Ram Avtar Singh who died in a motor accident which occurred on 27.07.2010.

2. The sole contention raised on behalf of the Appellant is that the deceased Ram Avtar Singh was a self employed person working as a building contractor and the Claims Tribunal erred in making an addition of 50% towards future prospects. It has been submitted that the Income Tax payable on the income of Rs. 2,29,000/- was also not deducted.

3. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it was held that in case of a self employed person, usually actual income on the date of the death is to be taken into consideration. However, in this case, there was oral evidence led by the Respondents (Claimants) in the shape of an affidavit Ex.PW1/A (of Buchiya Devi). She testified that her husband was in the business of civil construction. His business was going on very well and his income was increasing regularly. She testified that his income would have been much more if he would have been alive as he had very bright future in the business. The oral

evidence was corroborated by the Income Tax Return for the Assessment Year 2009-10 wherein the deceased returned an income of Rs. 1,64,760/-. In the next Assessment Year 2010-11, he returned an income of Rs. 2,29,480/-. There was a quantum jump of about 40% just in one year. In this view of the matter, the Respondents (Claimants) were entitled to an addition in the deceased''s income towards future prospects while computing the loss of dependency.

4. Admittedly, the deceased was aged 46 years on the date of the accident. Thus, the increase would be restricted to only 30% in view of Sarla Verma(supra). It goes without saying that Income Tax has to be deducted from the actual income to compute the loss of dependency. In view of the above discussion, the loss of dependency comes to Rs. 28,19,934/-(Rs. 2,29,480/- -7000 (Income Tax) + 30% X 3/4 X 13).

5. The overall compensation is reduced from Rs. 35,01,369/- to Rs. 29,65,158/-.

6. The excess compensation of Rs. 5,36,211/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. Rest of the amount shall be disbursed/held in Fixed Deposit in favour of the Respondents No.1 to 5 in terms of the orders passed by the Claims Tribunal.

7. The Appeal is allowed in above terms. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.