(2012) 05 DEL CK 0099

In the Delhi High Court

Case No : MAC. APP. 420 of 2011 and MAC. APP. 455 of 2012

United India Insurance Co. Ltd. APPELLANT

Vs

Inder Singh and Others
 Inder Singh and Others Vs United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0099

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

Bench : Single Bench

Advocate : L.K. Tyagi, in MAC. app. 420/2011 and Mr. Manish Maini, in MAC. app. 455/2012, for the Appellant; Manish Maini, for R-1 to R-4 in MAC. APP. 420/2011 and Mr. L.K. Tyagi in MAC. APP. 455/2012, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—MAC APP.420/2011 and MAC APP.455/2012 arise out of a judgment dated 03.03.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,23,000/- was awarded for the death of Smt. Sumitra Devi. MAC APP.420/2011 is for reduction of compensation awarded while MAC APP.455/2012 is for enhancement of the compensation.

2. The finding on negligence is not challenged by the Appellant Insurance Company.

3. The contentions raised on behalf of the Insurance Company are that :-

(i) During inquiry before the Claims Tribunal, it was claimed that the deceased Sumitra Devi was doing the job of stitching and embroidery and was earning Rs. 3,000/- per month, that having not been proved, the notional income of Rs. 15,000/- per annum ought to have been taken into consideration by the Claims Tribunal instead of considering the income of Rs. 3,000/- per month on the basis of the judgment in Lata Wadhwa and Others Vs. State of Bihar and Others,

(ii) The amount spent towards the personal and living expenses was not deducted; proper deduction ought to have been made. (iii) The compensation of Rs. 1,50,000/- awarded towards loss of consortium and Rs. 75,000/- towards loss of love and affection is excessive and exorbitant.

4. On the other hand, contentions raised on behalf of the Respondents No.1 to 4 (the Claimants) are that:-

(i) The value of gratuitous services taken as Rs. 3,000/- per month was on the lower side. It is urged that in Lata Wadhwa (supra) the accident took place in the year 1989 whereas in this case the accident took place in the year 2006.

(ii) The Claims Tribunal erred in taking the age of the deceased to be more than 50 years.

5. In the absence of any cogent evidence, the Claims Tribunal declined to believe that the deceased Sumitra Devi was doing any work of stitching or embroidery. It was held that she was a housewife. As stated earlier, the compensation was computed on the basis of Lata Wadhwa (supra).

6. The question of grant of compensation in case of a housewife is covered by the judgment of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors., MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(ii) National Insurance Company Limited v. Deepika & Ors., 2010 (4) ACJ 2221,

(iii) Amar Singh Thukral v. Sandeed Chhatwal, ILR (2004) 2 Del 1,

(iv) Lata Wadhwa and Others Vs. State of Bihar and Others,

(v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,

(vi) A. Rajam Vs. M. Manikya Reddy and Another

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband''s remarriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto r 25,000/- (on present scale of the money value) towards loss of love and affection and r 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

7. There is no evidence as to the deceased''s qualification. It was frankly conceded by the learned counsel for the Respondents (the Claimants) that the minimum wages of a non-Matriculate has to be taken into consideration for award of compensation.

8. As far as the deceased''s age is concerned, as per the election card, the deceased was aged about 40 years on the date of the accident. However, Inder Singh (the First Respondent and the husband of the deceased) in his testimony as PW-1 stated that at the time of the accident his wife was aged about 50-51 years. He himself gave his age to be 55-56 years. The age mentioned on the election card issued by the Election Commission of India is by approximation. In view of PW-1''s testimony, I would take the age of the deceased to be 50 years.

9. The compensation of Rs. 1,50,000/- awarded towards loss of consortium is exorbitant and excessive. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court held that a compensation upto Rs. 10,000/- should be awarded towards loss of consortium.

10. Loss of love and affection can never be measured in terms of money. 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. The Claims Tribunal awarded a sum of Rs. 75,000/- which was on the higher side. I would reduce the compensation under this head to Rs. 25,000/- only.

11. On the basis of the principles laid down in Master Manmeet Singh (supra), the compensation on account of the value of gratuitous services rendered by Smt. Sumitra Devi (the deceased), a housewife would come to Rs. 6,28,800/- (3505/- + 15% x 12 x 13).

12. On adding notional sum of Rs. 25,000/- towards loss of love and affection, Rs. 10,000/- each towards funeral expenses and loss of consortium, the overall compensation comes to Rs. 6,73,800/-.

13. The overall compensation is thus enhanced from Rs. 6,23,000/- to Rs. 6,73,800/-.

14. The enhanced compensation of Rs. 50,800/- shall carry interest @ 7.5% per annum (as granted by the Claims Tribunal) from the date of filing of the Petition till its deposit in this Court.

15. The enhanced compensation along with the interest shall be equally apportioned in favour of the Respondents No.1 to 4 (the Claimants).

16. The enhanced amount along with the interest shall be deposited in the name of Respondents No.1 to 4 in UCO Bank, Delhi High Court, New Delhi. The amount payable to the Claimants shall be held in fixed for a period of two years.

17. The amount already deposited shall be disbursed in terms of the order passed by the Claims Tribunal.

18. Both the Appeals are allowed and disposed of in above terms. Statutory amount of Rs. 25,000/- deposited in MAC APP. 420/2011 be refunded to the Appellant Insurance Company.