

(2014) 11 DEL CK 0223
In the Delhi High Court
Case No : Mac.App. 984/2014

United India Insurance Co. Ltd.

APPELLANT

Vs

Ishwar Lal

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 11 DEL CK 0223

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : K.L. Nandwani, Advocate for the Appellant

Judgement

Jayant Nath, J.

CM No. 17952/2014

Exemption allowed, subject to just exceptions.

MAC.APP. 984/2014 & CM No. 17951/2014

1. By the present appeal the appellant seeks to impugn the Award dated 22.8.2014.

2. The brief facts giving rise to the claim petition is that on 23.10.2013 the deceased Nitin was going to Sahibabad alongwith his Uncle. When he was waiting for the conveyance at Arthala Peer he was hit by a Maruti Van driven at a high speed. Nitin suffered injuries and was later declared dead. Nitin was a student of Class XI stated to be giving tuitions to the primary students and was earning Rs. 15,000/- per month.

3. Based on the evidence on record the Tribunal awarded a total compensation of Rs. 12,00,960/-. The Tribunal concluded that the deceased was a 11th class student and had already passed his 10th class examination. His potential earning was fixed based on minimum wages for a matriculate prevailing at the time of the accident in the state of UP i.e. as Rs. 6,580/- per month. 50% was added as

future prospects relying upon the judgment of the Supreme Court in *Rajesh and Others Vs. Rajbir Singh and Others*, . 50% was deducted on account of expenses towards self relying upon the judgment of this High Court in the case of *Mohd. Hasnain and Others Vs. Jagram Meena and Others*, . Taking into account the age of the deceased, i.e. 17 years at the time of the accident, the multiplier of 18 was adopted and loss of dependency was calculated at Rs. 10,65,960/-. A sum of Rs. 1 lac was added towards loss of love and affection. Rs. 10,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses.

4. Learned counsel appearing for the appellant insurance company firstly submits that the wrong respondent has been impleaded inasmuch as the respondent No. 4 who is impleaded as a driver of the offending vehicle is described as Suresh s/o Shri Murti Ram. It is submitted that in the chargesheet filed by the police the name of the driver is actually Suresh Rao s/o Bharat Rao. It is next submitted that the deceased was 17 years old and an 11th class student and his prospective income has been taken based on minimum wages which is erroneous and on top of that future prospects of 50% have been added. It is stated that this is erroneous. It is thirdly submitted that the deceased was a bachelor and the multiplier had to be taken based on the age of the claimant and not on the age of the deceased. It is lastly submitted that a sum of Rs. 1 lac has been wrongly added for loss of love and affection and the same is too high.

5. Learned counsel has also relied upon the cases of *Radhakrishna and Another Vs. Gokul and Others*, , *Kishan Gopal and Another Vs. Lala and Others*, , *Lata Wadhwa and Others Vs. State of Bihar and Others*, to contend that the multiplier while computing loss of dependency has to be based on the age of the parents of the deceased in the case of a bachelor and not on the basis of the age of the deceased.

6. Coming to the issue of assessment of income, based on potential earning of the deceased, reference may be had to the judgment of the Hon"ble Supreme Court in the case of *V. Mekala Vs. M. Malathi and Another*, . That was a case of a girl student studying in 11th standard aged 16 years. The Supreme Court relying on various earlier judgments held that it would be just and proper keeping in mind her past results to fix the notional monthly income at Rs. 10,000/- per month for computing compensation under the head of loss of income. On this 50% increase was added following the judgment of the Supreme Court in the case of *Santosh Devi Vs. National Insurance Company Ltd. and Others*, for future prospects. Based on the said computation a multiplier of 18 was used and a total compensation under the head of loss of income due to injury was assessed at Rs. 22,68,000/-. It may be noted that it was a case of permanent disability and the loss of disability was assessed at 70%.

7. Reference may be had to the judgments cited by the appellant. *Radhakrishna and Another vs. Gokul and Others* (supra) was a case where the deceased was 19 years old and a student of a Degree course in engineering. The Tribunal had determined the probable income at Rs. 15,000/- per month and deducted 1/3rd

for annual dependency. The multiplier of 17 was adopted and total compensation of Rs. 1,70,000/- was assessed for loss of dependency. The Supreme Court observed having regard to the age of the parents of the deceased, ends of justice would be served by awarding a lumpsum compensation of Rs. 7 lacs to the claimants.

8. *Lata Wadhwa & Ors. vs. State of Bihar & Ors.* (supra) was a case where the Court for computing compensation had divided the cases of deceased children into two groups. First group was for children between the age group of 5-10 years and the second group was for children between the age group of 10-15 years. In the case of 5-10 year age group a sum of Rs. 1.5 lacs was held payable by way of compensation, to which the conventional figure of Rs. 50,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs. 2 lacs each, has been awarded. So far as the children in the age group of 10 to 15 years, there were 10 such children, who died on the fateful day having found their contribution to the family at Rs. 24,000/- per annum, multiplier of 15 had been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs. 50,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs. 4.10 lacs each.

9. Similarly, *Kishan Gopal and Another vs. Lala and Others* (supra) was also a case of a child who was 10 year old where the Supreme Court followed the judgment in the case of *Lata Wadhwa & Ors. vs. State of Bihar & Ors.* (supra) having regard to the fact that the deceased was 10 years of age. The Court, however, felt that about notional income it would be reasonable to take the notional income at Rs. 30,000/- and taking into account the age of the mother multiplier of 15 was adopted and Rs. 4,50,000/- was awarded as compensation for loss of dependency and Rs. 50,000/- under conventional heads of loss of love and affection, funeral expenses etc.

10. It is clear that judgments of the Supreme Court in the case of *Kishan Gopal and Another vs. Lala and Others* (supra) and *Lata Wadhwa & Ors. vs. State of Bihar & Ors.* (supra) are not applicable to the facts of the case. These cases relate to the case of children below 15 years. In the case of *Radhakrishna and Another vs. Gokul and Others* (supra) there is no finding recorded that the multiplier has to necessarily in all circumstances be based on the age of the deceased and cannot be based on the age of the parents. These judgments do not help the case of the appellants.

11. This Court has been following the judgment of this Court in the case of *Mohd. Hasnain and Others Vs. Jagram Meena and Others*, . In that judgment this court relying upon earlier judgments of the Supreme court held that the multiplier has to be based on the age of the deceased and not on the age of the claimants.

12. Reference may also be had to the various other judgments. In *M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another*, which was a case

where the deceased was a bachelor of 24 years of age the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. In the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, the deceased was a bachelor aged 26 years and the Supreme Court applied the multiplier of 17 based on the age of the deceased.

13. Even otherwise, the judgment of the Supreme Court in the case of V. Mekala vs. M. Malathi & Anr.(supra) would be more akin to the facts of the present case. Hence, the assessment of compensation as awarded by the Tribunal in the facts and circumstances of this case is fair, reasonable and just.

14. Coming to the issue of identity of the driver, it is obvious from a perusal of the Award that this aspect was never brought to the attention of the Tribunal by the appellant. It is for the first time before this Court that this aspect has been argued. A question was posed to learned counsel appearing for the appellant as to what prejudice is caused to the appellant by a wrong description of the driver. There is no appropriate answer given to this question posed.

15. In my opinion, it will be unfair to permit the appellant/insurance company at this stage, to raise this contention to deviate from the present compensation proceedings especially as no prejudice is being caused to the appellant/insurance company inasmuch as they have admitted the insurance policy.

16. Coming to the last contention of love and affection, the grant of compensation of Rs. 1 lac for loss of love and affection is fair and reasonable.

17. There is no merit in the present appeal. Same is dismissed. Pending application also stand dismissed accordingly.

18. Statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant.