
(2012) 01 DEL CK 0218
In the Delhi High Court
Case No : MAC App. 433 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Josphine James and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0218

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

Bench : Single Bench

Advocate : A.K. De, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant United India Insurance Co. Ltd. seeks reduction of the compensation of Rs. 13,07,000/- awarded by the Tribunal in Suit No.778/2003 on account of the death of Vishal James in an accident which took place on 12.06.1998, when his car No.DL-2CF-3431 was hit by a Truck No.RJ-14G-7596 which was being driven in a rash and negligent manner by its driver.

2. The contentions raised on behalf of the Appellant are: -

(i) Future prospects were granted to the Claimants in the absence of any evidence.

(ii) The appropriate multiplier as per the age of the Claimant i.e. 41 years is "14". The Tribunal erred in applying the multiplier of "15".

3. The Appellant is bound to succeed on both counts. The Respondents (Claimants) produced PW-5 Harpal Singh, Proprietor of Meenakshi Automobiles. He deposed that the deceased was working as a Motor Mechanic with him during the year 1993-1998. Initially the deceased was working in Delhi. He shifted his workshop at Bareilly Road, Haldwani and the deceased too joined him there. He deposed that the workshop at Haldwani was also closed and then shifted to

Gurgaon (after the accident). Future prospects can be granted where the Claimant has produced evidence regarding the increase of income in the course of the employment or business or profession [Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others,] or if there is evidence of permanent/ stable employment, but none was available here. In fact, the employer himself was not having a permanent establishment as he had to shift from Delhi to Haldwani and then to Gurgaon. He was unable to produce any proof of his workshop at Haldwani except the receipts for the payment of LIC premium, telephone bills, visiting cards and photographs of the workshop Ex. PW-5/1 to PW-5/8. The workshop at Haldwani was also shut down. In the circumstances, the Tribunal erred in granting future prospects to the deceased. Respondent Joshpine James was the only Petitioner in the claim petition. The multiplier has to be as per the age of the deceased or the Claimant whichever is higher. The appropriate multiplier at the age of 41 years as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, is "14". In the case of death of an unmarried person a deduction of 50% is required to be made towards personal and living expenses. The loss of dependency thus comes to Rs. 5,000/- $\times 2 \times 12 \times 14 = 4,20,000/-$.

4. Where the Claimants are entitled to loss of dependency on actual basis, normally a nominal sum is awarded under the head of loss of love and affection. 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.

5. I further award a sum of Rs. 15,000/- towards funeral expenses as granted by the Tribunal and another sum of Rs. 10,000/- towards loss of estate. The compensation of Rs. 3,42,000/- as granted by the Tribunal on the basis of the report Ex.PW-4/A of the survivor is not disputed. The same is accordingly maintained.

6. The overall compensation stands reduced from Rs. 13,07,000/- to Rs. 8,12,000/-. Considering that the accident took place in the year 1998 and the Bank interest rate was very low in the beginning of this century, award of interest @ 6% per annum cannot be interfered with.

7. The Respondent No.1 shall be entitled to a sum of Rs. 8,12,000/- with interest from the date of filing of the petition till the date of deposit, which shall be released to the Respondent No.1 in terms of the award of the Tribunal.

8. The Appeal is allowed in above terms.