

(2013) 09 DEL CK 0021
In the Delhi High Court
Case No : Mac. App. 1074 of 2012

United India Insurance Co. Ltd.

APPELLANT

Vs

Raju Saw and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 4 ACC 230

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : D.D. Singh and Mr. Navdeep Singh, for the Appellant; Navneet Goyal and Ms. Mamta Bhadwaj for R1 and R2, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.

CM. NO. 17080/2012 (For delay)

In view of the averments made in the application, the delay of 28 days in filing the instant appeal is condoned.

The application stands disposed of.

+ MAC. APP. 1074/2012

1. Instant appeal has been preferred against the impugned award dated 05.05.2012, whereby Id. Tribunal has granted compensation as under:

Ld. Counsel appearing on behalf of the appellant argued that respondents/ claimants failed to prove that deceased was working anywhere and Id. Tribunal has considered the salary of the deceased as Rs. 3,683/- as per the minimum wages for unskilled persons.

2. The second ground argued by the Id. Counsel for the appellant is that compensation granted towards non-pecuniary heads, i.e., Rs. 1,00,000/- for loss

estate and Rs. 1,00,000/- for loss of love and affection are on the higher side. Therefore, it has to be reduced.

3. Id. Counsel further argued that the age of the deceased was 23 years at the time of accident. He was a Bachelor and was not in a permanent job. Therefore, Id. Tribunal ought not to have granted any compensation towards future prospects in view of the dictum of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, However, Id. Tribunal has granted 50% future prospects.

4. Lastly, Id. Counsel has argued that Id. Tribunal has erred in granting Rs. 50,000/- as Counsels fee and Rs. 5,000/- as out of pocket expenses as there is no such provision in the Motor Vehicles Act.

5. On the other hand, Id. Counsel appearing on behalf of the respondents/claimants submits that deceased was at the young age of 23 years. He was unmarried. He was only the hope of his parents and Id. Tribunal has granted a very meagre compensation of Rs. 6,40,989/-.

6. He further submits that keeping in view the dictum of Rajesh and Others Vs. Rajbir Singh and Others, , Id. Tribunal ought to have granted Rs. 25,000/- towards funeral expenses, however granted only Rs. 10,000/-. He further submits that compensation granted towards loss of love and affection and loss of Estate, i.e., Rs. 1,00,000/- each is not on a higher side.

7. Id. Counsel submits that while granting the compensation on non-pecuniary heads, Id. Tribunal has to consider the facts and circumstances of each and every case as there is no straight jacket formula to apply the same.

8. In the present case, respondents/claimants are old and ailing. The deceased was the only hope of his parents. He died at the age of 23 years. Therefore, Id. Tribunal has rightly granted compensation on the non-pecuniary heads.

9. As the issue of future prospects is concerned, recently the Apex Court in the case of Rajesh (Supra) has held that up to 40 years of age, 50% future prospects should be granted. Thereafter from 40 to 50 years it should be 30% and from 50 to 60 years it should be 15%.

10. Id. Counsel appearing on behalf of the respondents/claimants submits that Id. Tribunal has rightly granted 50% future prospects keeping in view the age of deceased as 23 years.

11. Lastly, Id. Counsel for the respondents/claimants has fairly conceded that issue of the lawyers fee and out of pocket expenses has been decided by this court in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Kanti Devi and Others, therefore, he does not press this issue and submits that the same may be allowed in favour of the appellant.

12. Settled law is that when the claimants failed to prove the salary, Id. Tribunal has to consider the minimum wages applicable to the unskilled person.

13. In the present case also respondents/claimants failed to prove the salary of the deceased, therefore, I am of the opinion that Id. Tribunal has rightly considered the income of the deceased as per the minimum wages for the unskilled persons.

14. As the issue of future prospects is concerned, same has been decided by the Apex Court in the case of Rajesh (Supra). The age of the deceased was 23 years of age at the time of accident and Id. Tribunal has added 50% future prospects. Therefore, I do not find any discrepancy on the issue of future prospects.

15. As the issue of non-pecuniary heads is concerned, Id. Tribunal has granted Rs. 1,00,000/- each towards loss of love and affection and loss of estate.

16. I have come across number of judgments of this court and the Apex Court, including the case of Rajesh (Supra), wherein the loss of estate has been granted as Rs. 10,000/-. Therefore, keeping in view the dictum of Rajesh (Supra) compensation towards loss of estate is reduced from Rs. 1,00,000/- to Rs. 10,000/-.

17. At this stage, Id. Counsel appearing on behalf of the respondents/claimants submits that Id. Tribunal and this court has to see whether the compensation granted is just and fair. Therefore, if just and fair compensation is not granted, this court has power to grant the same.

18. He submits that towards funeral expenses, Id. Tribunal has granted Rs. 10,000/-, whereas recently in the case of Rajesh (Supra), the Apex Court has granted Rs. 25,000/- to this head.

19. I find force in the submission of the Id. Counsel for the respondents/claimants on the issue of just compensation. Therefore, I enhance Rs. 25,000/- from Rs. 10,000/- towards funeral expenses. Therefore the modified compensation comes as under:

20. Hence, the reduced compensation comes to Rs. 5,65,989.

21. Accordingly, instant appeal stands disposed of.

22. I note, vide order dated 28.09.2012, appellant was directed deposit the 60% of the award amount with up-to-date interest with UCO Bank, Delhi High Court Branch. Appellant is directed to deposit the balance compensation amount with interest @ 9% from the date of filing of the claim petition till the deposit of the balance compensation amount with Registrar General of this Court within five weeks from today. Failing which, appellant would be liable for penal interest @ 12% on delayed payment.

23. On deposit, Registrar General is directed to release the amount in favour of the respondents/claimants in terms of the order dated 05.05.2012 passed by the Id. Tribunal. Statutory amount of Rs. 25,000/- be released in favour of the appellant.

CM. NO. 17079/2012 (For Stay)

With the disposal of the instant appeal itself, instant application has become infructuous and disposed of as such.