(2003) 07 DEL CK 0079

In the Delhi High Court

Case No : FAO No. 300 of 2001

Veena Aggarwal and Others APPELLANT

Vs

Inderjeet Pandey and Others RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2003) 3 ACC 6 : (2004) ACJ 1831 : (2003) 5 AD 584 : (2004) 2 CivCC 327 : (2003) 105 DLT 957 : (2003) 70 DRJ 345 : (2003) 135 PLR 9

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : O.P.S. Shekhawat and G.P. Srivastava, for the Appellant; Kishore Rawat, for the Respondent

Judgement

S.K. Mahajan, J.—ADMIT.

2. The short point involved in this appeal is whether the Tribunal at the time of assessing compensation payable to the family of the deceased was required to take into consideration the future prospects in life of the deceased and whether the appellant is entitled to more interest than what has been awarded by the Tribunal.

3. In a claim petition filed by the wife and parents of the deceased who had died in a road accident while he was traveling in a car which was hit by a truck being driven rashly and negligently by its driver on 26.4.1992, the Tribunal after holding that the accident was caused due to the rash and negligent driving of the truck held that the appellants being the legal heirs of the deceased were entitled to award of compensation in their favor. Taking the income of the deceased at Rs.5,000/- per month in terms of the Income Tax assessment order, the Tribunal awarded a compensation of Rs.6,90,000/- by applying the multiplier of 16. The deceased at the time of death was 41 years of age. Aggrieved by the award, the appellants have filed this appeal for enhancement of compensation.

4. The only point argued by learned counsel for the appellant is that while

arriving at the compensation to which the appellants were entitled, the Tribunal has not taken into consideration the future prospects in life of the deceased. It is submitted that as per the settled law of the Supreme Court, the Tribunal ought to have considered this aspect and awarded compensation accordingly. It is also submitted that the Tribunal ought to have awarded a minimum of 12% interest on such compensation.

5. On behalf of the respondent it is submitted that notice issued by the Court was limited only to the question of grant of interest and compensation for loss of consortium and appellant was, Therefore, not entitled to argue the question of future prospects in life of the deceased. I do not agree with learned counsel for the respondent inasmuch as if the Tribunal has not considered the settled law laid down by the Supreme Court, the notice could not be limited only to the grant of interest. I have, Therefore, considered this appeal in its entirety both on the question of future prospects in life of the deceased as well as the award of interest.

6. As held by the Supreme Court in General Manager, Kerala State Vs . Susamma Thomas 1994 ACJ 1 and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, while assessing the compensation payable to the family of the deceased, the Court is also required to consider the future prospects in life of the deceased. It was held in these cases that if the deceased had stable income, the Court would not be in error in coming to the finding that the deceased in due course of time would have been in receipt of higher income and the Tribunal while assessing the compensation should take the same into consideration. In the present case, admittedly the assessed income of the deceased was Rs.5,000/- per month, the deceased was 41 years of age and applying the principles laid down in the aforesaid judgments of the Supreme Court, this Court would not be in error in taking the average income of the deceased at Rs.9,000/- per month. Deducting 1/3rd from this income towards personal expenses of the deceased, loss of dependency to the family comes to Rs.6,000/- per month or say Rs.72,000/- per year. In terms of the Second Schedule to the Motor Vehicles Act in case of a person between age of 40 and 45 years, the correct multiplier to be applied is 15. It is also now well-settled that unless there are reasons to deviate from the Second Schedule to the Motor Vehicles Act, the Court should normally follow the Second Schedule and assess the compensation accordingly. Applying the multiplier of 15, the total compensation to which the family of the deceased would be entitled comes to Rs.10,80,000/-. Adding to this, the amount of Rs.50,000/- awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses, etc., the total compensation to which the appellants would be entitled comes to Rs.11,30,000/-.

7. In so far as the interest is concerned, in my view, the Tribunal has correctly awarded interest @ 9 % per annum and the appellant is, Therefore, not entitled to be awarded higher interest.

8. For the foregoing reasons, I allow this appeal, modify the impugned award and

direct a sum of Rs.11,30,000/- to be paid to the appellants by way of compensation. The appellants will also be entitled to interest on the enhanced compensation @ 9% per annum from the date of application till the date of realisation. The amount of compensation would be invested and paid proportionately in the manner directed by the Tribunal. In the facts of this case, I leave the parties to bear their own costs.

