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(2009) 04 DEL CK 0558

Delhi High Court

Case No: FAO No. 499 of 1999

Vasdev and Others — APPELLANT

Vs

DTC and Others — RESPONDENT

Date of Decision: April 20, 2009

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: O.P. Mannie, for the Appellant; J.N. Aggarwal, for the Respondent

Judgement

Kailash Gambhir, J.
The present appeal arises out of the award dated 21.7.1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 72000/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 10.3.1989 deceased Joginder alias Palli alongwith his friend Sanjay Arora had gone to M/s. Competent Motors, Mundka Delhi in order to get their Maruti car bearing registration No. DDC 6637 serviced. In the meanwhile, a bus bearing registration No. DEP 9939 came from Bahadur Garh side in a rash and negligent manner and hit deceased Joginder who fell down on the ground and became unconscious and succumbed to the injuries on the same day.

4. A claim petition was filed on 31.7.1989 and an award was passed on 21.7.1999. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie, Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 864/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 2541/- per month. The Counsel submitted that the tribunal erroneously applied the multiplier of 10 while computing compensation when according to

the facts and circumstances of the case multiplier of 15 should have been applied. It was urged by the Counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 22 yrs of age only and would have lived for another 40-50 yrs had she not met with the accident. It was also alleged by the Counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in an year and hence, the deceased would have earned much more in her life span.

6. Shri J.N. Aggarwal, Counsel for the respondents submitted that the award passed by the ld. Tribunal is just and fair and requires no interference by this Court.

7. I have heard learned Counsel for the parties and perused the record.

8. Appellant No. 1 examined himself as PW-3 and deposed that deceased was his only son who died in a road side accident. He further deposed that the deceased was a property dealer by profession and was earning Rs. 3,000/- per month. He used to give his entire salary for household expenses.

9. The appellants claimants had not brought on record any documentary evidence relating to the income of the deceased. After considering I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 864/- p.m. in accordance with the Minimum Wages Act.

10. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

11. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.

12. Therefore, no interference is made in relation to income of the deceased by this Court.

13. As regards the future prospects, a perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Therefore, the Tribunal committed an error in not considering the same. Thus, the award is modified to this extent.

14. As regards the contention of the Counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased is survived by his aged parents. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

15. As regards the contention of the Counsel for the appellant that the tribunal has erred in applying the multiplier of 10 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1989 and at that time II schedule to the Motor Vehicles Act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon"ble Apex Court in 1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. The deceased was of 22 years at the time of the accident and is survived by his aged parents of 50 and 42 years. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased and after considering applicable multiplier under Motor Vehicles Act and taking a balanced view the multiplier of 11 shall be applicable.

16. On the contention regarding that the tribunal has erred in not granting compensation towards loss of love & affection, funeral expenses, loss of estate, and the loss of services, which were being rendered by the deceased to the appellants. In this regard compensation towards loss of love and affection is awarded at Rs. 20,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

17. As far as the contention pertaining to the awarding of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of their only son and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages.

18. Therefore, compensation towards loss of dependency comes to Rs. 1,14,048/- (864 x 3/2 x 2/3 x 12 x 11).

19. After considering Rs. 40,000/-, which is granted towards non pecuniary damages, the total compensation comes out as Rs. 1,54,048/-.

20. In view of the above discussion, the total compensation is enhanced to Rs. 1,54,048/- from Rs. 72,000/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants by the respondents in equal proportion.

21. With the above direction, the present appeal is disposed of.