Ram Avtar and ors. Vs. Prem Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/1095525

Court : Delhi

Decided On : Oct-25-2013

Judge : Suresh Kait

Appellant : Ram Avtar and ors.

Respondent : Prem Kumar and ors.

Judgement :

$~40 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

25. h October, 2013 % + MAC.APP. 999/2012 RAM AVTAR & ORS. ..... Appellants Represented by: Mr. Jatinder Kamra, Adv. Versus PREM KUMAR & ORS. ..... Respondents Represented by: Ms. Rakhi Dubey, Adv. for R3. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Instant appeal has been preferred against the impugned award dated 19.03.2012, whereby ld. Tribunal has granted compensation as under with interest @ 7.5% per annum from the date of institution of the claim petition till realization:

1.

2. 3.

4.

5. Loss of dependency Compensation in respect of medical bills prior to death of deceased Loss of Estate Loss of Love and Affection Funeral expenses & Transportation charges Total MAC.APP. 999/2012 : Rs.3,60,000/- : : : Rs.10,023/Rs.10,000/Rs.20,000/- : :

2. The present appeal is for enhancement of the compensation amount as noted above.

3. Ld. Counsel appearing on behalf of the appellants submitted that the appellants could not prove the salary of the deceased, therefore, ld. Tribunal has rightly assessed the monthly income of the deceased as Rs.4,000/- per month as per the minimum wages applicable to a matriculate prevalent at the time of accident. However, ld. Tribunal failed to grant any future prospects in favour of the appellants / claimants.

4. He further argued that towards non-pecuniary losses, ld. Tribunal has granted Rs.20,000/- for loss of love and affection and Rs.5,000/- for funeral expenses which are on a lower side.

5. To strengthen his arguments, ld. Counsel for the appellant has relied upon a case of Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE563followed by the judgment passed by this court in the case of ICICI Lombard Gen. Insurance. Co. Ltd. v. Angrez Singh in MAC.A. 846/2011.

6. On the other hand, ld. Counsel appearing on behalf of the respondent No.3 / insurance company submits that appellants failed to prove the salary of the deceased. Accordingly, ld. Tribunal has assessed the monthly income of the deceased as Rs.4,000/- per month applicable to a matriculate. Since the appellants failed to establish that the deceased was on permanent job, therefore, ld. Tribunal has rightly not granted the future prospects in view of the dictum of Sarla Verma Vs. DTC and Ors. 2009 (6) SCC121further affirmed in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr. 2013(5) SCALE160 7. The issue of future prospects is no more res-integra after the dictum of Full Bench of Supreme Court in case of Rajesh (Supra) wherein extended the scope of future prospects and held as under:

11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

8. Thereafter this court has followed the aforesaid dictum of Supreme Court in case of Angrez Singh (Supra).

9. Therefore, keeping in view the age of the deceased as 19 years at the time of the accident, I grant 50% towards future prospects.

10. As the issue on non-pecuniary damages are concerned, while relying upon the dictum of Rajesh (Supra), I enhance Rs.1,00,000/towards love and affection and Rs.25,000/- towards funeral expenses. Accordingly, the compensation comes as under:

Loss of Dependency (Rs.3,000x12x15) Medical Bills prior to death of deceased Loss of Love and Affection Loss of Estate Funeral expenses Total compensation 11.-. Rs.5,40,000/- - Rs. 10,023/Rs.1,00,000/Rs. 10,000/Rs. 20,000/Rs.6,80,023/- Hence the enhanced compensation comes to Rs.2,75,000/- (Rs.6,80,023 - Rs.4,05,023). The enhanced compensation shall also carry interest @ 7.5% per annum from the date of institution of the claim petition till realization.

12. Instant appeal stands disposed of on above terms.

13. Consequently, respondent No.3 / insurance company is directed deposit the enhanced compensation with interest within five weeks from today with Registrar General of this court, failing which respondent No.3 / insurance company is also liable to pay penal interest @12% on delayed payment.

14. On deposit the Registrar General shall release the same in favour of the appellants / claimants proportionately in terms of the order dated 19.03.2012 passed by the ld. Tribunal on taking steps. SURESH KAIT, J OCTOBER25 2013 jg