Surinder Kaur and ors. Vs. Ramesh Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/1095942

Court : Delhi

Decided On : Oct-29-2013

Judge : Suresh Kait

Appellant : Surinder Kaur and ors.

Respondent : Ramesh Kumar and ors.

Judgement :

$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

29. h October, 2013 MAC.APP. 569/2012 SURINDER KAUR & ORS. ..... Appellants Represented by: Mr. O.P. Mannie, Adv. versus RAMESH KUMAR & ORS. ..... Respondents Represented by: Ms. Suman Bagga, 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 17.01.2012, whereby ld. Tribunal has granted compensation for a sum of Rs.20,63,150/- with interest @ 7.5% per annum from the date of filing of the petition till realization.

2. Vide the instant appeal, appellant is seeking enhancement of the compensation as noted above.

3. Ld. Counsel appearing on behalf of the appellant submits that from the ITR on record, it is established that the deceased was earning Rs.13,000/per month from the business of sale and service of communication equipment. Thus, the said business was permanent in nature.

4. He further submits that the age of the deceased was 37 years at the time of accident, despite, ld. Tribunal has wrongly added 30% towards future prospects. 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) SCALE563and submitted that keeping in view the age of the deceased it has to be enhanced from 30% to 50%.

5. He has further argued that on the issue of non-pecuniary losses, ld. Tribunal has granted Rs.50,000/- towards loss of love and affection and Rs.10,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses. Ld. Counsel submits that in view of the dictum of Apex Court in case of Rajesh (Supra), the compensation amount has to be enhanced, accordingly.

6. On the other hand, ld. Counsel appearing on behalf of the respondent / insurance company has opposed the instant appeal on the ground that the deceased was not in a permanent job and relied upon a case of Bijoy Kr. Dugar v. Bidya Dhar Dutta & Ors.2006ACJ1058.

7. She further submits that the claimants failed to prove that the deceased had no plan for enhancing his business and in the absence of the same, ld. Tribunal has rightly added 30% towards future prospects.

8. Ld. Counsel for the respondent / insurance company has further argued that if this court is inclined to enhance the future prospects from 30% to 50%, in that eventuality interest may not be awarded from the date of filing of the petition till realization, but from filing of the appeal till realization in favour of the claimants.

9. On this issue, ld. Counsel for the appellant has relied upon a case of Pushkar Mehra v. Brij Mohan Kushwaha & Ors. Civil Appeal No.8410 of 2013, wherein while granting the future prospects, the Apex Court has awarded interest @ 9%

from the date of filing of the petition till realization.

10. As the issue of non-pecuniary losses are concerned, ld. Counsel for the respondent / insurance company submits that accident took place on 08.09.2010 and the deceased left behind, his wife, two children and parents. Therefore, keeping in view the facts and circumstances of the case, ld. Tribunal has rightly granted compensation towards non-pecuniary losses.

11. As the issue of future prospects is concerned, the same is no more res- integra keeping in view the dictum in Rajesh (Supra) followed by this Court in the case of ICICI Lombard Gen. Insurance. Co. Ltd. v. Angrez Singh in MAC.A. 846/2011. In the case in hand, deceased was 37 years at the time of accident. Therefore, I grant 50% towards future prospects.

12. As regards the loss on non-pecuniary heads are concerned, ld. Tribunal has granted the compensation on lower side as noted above. Therefore, keeping in view the dictum in Rajesh (Supra), I award Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. Therefore, the compensation comes as under: Heads Compensation Compensation granted by the ld. granted by this Court. Tribunal Loss of Dependency Rs.19,83,150/- MAC.APP. 569/2012 Loss of Consortium Rs.1,00,000/- On account of loss of Rs.50,000/love and affection Rs.1,00,000/- Loss of Estate Rs.10,000/- Rs. 10,000/- Funeral Expenses Rs.10,000/- Rs. 25,000/- Total 13. Rs.10,000/- Rs.20,63,150/- Rs.28,67,500/- Hence the enhanced compensation comes to Rs.8,04,350/- (Rs.28,67,500 - 20,63,150).

14. The enhanced compensation shall also carry interest @ 7.5% per annum from the date of filing of the petition till realization.

15. In view of the above instant appeal is allowed.

16. Respondent No.3 / insurance company is directed to deposit the enhanced amount with interest with Registrar General of this court within five weeks from today.

17. On deposit the Registrar General shall release the amount in favour of the appellants / claimants on taking steps. SURESH KAIT, J OCTOBER29 2013 jg