Jyoti and ors. Vs. Pawan Kumar and ors

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SooperKanoon Citation : sooperkanoon.com/1100314

Court : Delhi

Decided On : Nov-29-2013

Judge : Suresh Kait

Appellant : Jyoti and ors.

Respondent : Pawan Kumar and ors

Judgement :

$~32 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

29. h November, 2013 % + MAC.APP. 1274/2012 JYOTI AND ORS. ..... Appellants Represented by: Ms. Vishakha for Mr.M.K. Sinha, Advocate. Versus PAWAN KUMAR AND ORS Represented by: ..... Respondents Ms. Suman Bagga, Advocate for Respondent No.3/Insurance Company. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. The present appeal has been preferred against the impugned award dated 11.04.2012, whereby the learned Tribunal has granted compensation for a sum of Rs.10,60,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

2. Vide the instant appeal, appellants are seeking enhancement of the compensation amount as noted above.

3. Learned counsel appearing on behalf of the appellants has argued that at the time of the accident, the deceased was 32 years of age, despite that the learned Tribunal has not granted any amount towards future prospects.

4. She further argued that the deceased left behind his widowed wife, a son and an unmarried dependant sister, despite that the compensation granted by the learned Tribunal towards non-pecuniary heads as Rs.25,000/- towards loss of love and affection and Rs.10,000/- each for loss of consortium and funeral expenses are on very lower side.

5. To strengthen her arguments, learned counsel has relied upon the case of Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE563 wherein the Apex Court has held as under:

The ratio of a decision of this court on a legal issue is a precedent. But an observation made by this court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi (Supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Vermas case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouses affection, comfort, solace, companionship, society, assistance, protection care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head Funeral Expenses. The Price Index, it is a fact has gone up in that regard also. The head Funeral Expenses does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of Funeral Expenses, in the absence of evidence to the contrary for higher expenses to award at least an amount of Rs.25,000/-.

6. On this issue, learned counsel for the appellants submitted that in Rajesh & Ors. (supra), the Apex Court has granted Rs.1,00,000/- each on account of loss of consortium and loss of love and affection and Rs.25,000/- for funeral expenses.

7. On the other hand, learned counsel appearing on behalf of respondent No.3/ Insurance Company has submitted that the claimants have failed to prove the salary of the deceased, therefore, the learned Tribunal has assessed the monthly income of the deceased on the basis of the minimum wages applicable to a matriculate at the relevant time.

8. While relying upon the dictum of Sarla Verma Vs. DTC & Ors. 2009 (6) SCC121further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr. 2013(5) SCALE160 she submitted that the learned Tribunal has rightly not granted future prospects in favour of the claimants.

9. Further, counsel argued that so far as the non-pecuniary heads are concerned, the compensation granted by the learned Tribunal under all the three heads noted above is just and proper compensation.

10. As the issue of future prospects is concerned, this issue is no more res integra as the same has already been decided by the Apex Court in the case of Rajesh (Supra) and followed by this Court in the case of ICICI Lombard Gen. Insurance. Co. Ltd. Vs. Angrez Singh in MAC.A. 846/2011. Therefore, keeping in view the dictum in Rajesh & Ors. (supra;) and the subsequent view taken by this Court in Angrez Singh (supra;) and the age of the deceased as 32 years at the time of the accident, I grant 50% of the income towards future prospects.

11. So far as the issue of non-pecuniary damages is concerned, keeping in view the law discussed above I enhance Rs.1,00,000/- from Rs.25,000/- for loss of love and affection, Rs.1,00,000/- from Rs.10,000/- for loss of consortium and Rs.25,000/- from Rs.10,000/- for funeral expenses.

12. Accordingly, the compensation comes as under: Heads For Loss of dependency Compensation granted by ld. Tribunal Rs.10,01,856/- Loss of love and affection Loss of consortium Loss of estate For funeral expenses Total Compensation Rs.25,000/Rs.10,000/Rs.10,000/Rs.10,000/Rs.10,56,856/- 13. Compensation granted by this Court Rs.15,02,592/(after adding 50% future prospect) Rs.1,00,000/Rs.1,00,000/Rs.10,000/Rs.25,000/Rs.17,37,592/- Consequently the enhanced compensation comes to Rs.6,77,592/- (Rs.17,37,592 - Rs.10,60,000/-).

14. The appellants are entitled for the enhanced compensation amount with interest @ 7.5% per annum from the date of filing of the petition till realization.

15. Consequently, respondent No.3/Insurance Company is directed to deposit the enhanced compensation amount with upto date interest accrued thereon within five weeks from today with Registrar General of this Court, failing which the appellants/claimants shall be entitled for interest at the rate of 12% per annum on delayed payment.

16. On deposit, the Registrar General shall release the compensation amount with up-to-date interest in favour of the appellants/claimants in terms of the impugned award dated 11.04.2012.

17. In view of the above, the instant appeal is allowed. SURESH KAIT, J.

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