Shipra Chatterjee and ors. Vs. Jai Pal Singh and ors.

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Court : Delhi

Decided On : Jan-16-2014

Judge : Suresh Kait

Appellant : Shipra Chatterjee and ors.

Respondent : Jai Pal Singh and ors.

Judgement :

$~20 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

16. h January, 2014 + MAC.APP. 397/2010 SHIPRA CHATTERJEE & ORS. Represented by: ..... Appellants Mr. Rajeev Khosla, Advocate. Versus JAI PAL SINGH AND ORS. Represented by: ..... Respondents Mr. Anuj Aggarwal, Advocate. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. The instant appeal has been filed by the claimants for enhancing the impugned award dated 19.12.2009, whereby ld. Tribunal granted compensation for an amount of Rs.4,66,630/- with interest @ 8% per annum from the date of filing of the petition till its realization.

2. It is noted that while computing the compensation amount noted above, inadvertently, the learned Tribunal has awarded Rs.4,66,630/instead of Rs.4,66,300/-.

3. Ld. Counsel appearing on behalf of the appellants submitted that undisputedly the deceased met with an accident on 01.03.1997 and remained in COMA till his death, i.e., 18.12.1997. He died at the age of 37 years; left behind wife, minor daughter and old parents. The claimants could not get documents of the current income of the deceased as they could not talk to the deceased. Therefore, they had filed Income Tax Returns of the deceased for the assessment year 1993-94 and 1994-95. Ex.PW1/17, i.e., the balance sheet dated 10.08.1994 of the year 1994, shows gross income of the deceased as Rs.70,200/-. However, net income of the deceased was Rs.31,000/- and Rs.32,968/- respectively and the same are Ex.PW1/13 to 19.

4. Ld. Counsel submitted that ld. Tribunal has considered only the net income, whereas the deceased was earning Rs.70,200/- in the year 1994, i.e., three years before the accident. He submitted that the deceased as an Advocate had to spend some amount on the books and periodicals as is mentioned in Ex.P1/17, the balance sheet dated 10.08.1994. Other miscellaneous expenses such as printing and stationery, office expenses and membership fee of the Bar were also incurred which are normally not the expenses in other cases. However, while calculating the compensation, the ld. Tribunal has considered only the net income of the deceased.

5. Ld. Counsel further submitted that profession of an Advocate is permanent in nature. There is no retirement age in this profession and one can continue till he/she remains physically fit. Therefore, the learned Tribunal ought to have considered his profession as permanent and keeping in mind the age of the deceased as 37 years at the time of accident, should have granted 50% towards future prospects. However, ld. Tribunal failed to do so.

6. He submitted that the issue of future prospects has been decided by the Full Bench of the Apex Court in Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE563 wherein it is held that even in a case of minimum wages or others, the claimants are entitled for the future prospects.

7. Ld. Counsel for the appellant further argued that deceased died at the age of 37 years. He was an Advocate. Had he been alive, he would have earned more and

more as an Advocate. He left behind a young widow, minor daughter and old parents, however, ld. Tribunal has granted Rs.20,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses.

8. Three years prior to the date of accident, the annual income of the deceased was Rs.70,200/- and as per the Income Tax Return on the record there was an increase in both the years. The income of a professional normally does not remain the same and it is always on the increasing side. Therefore, keeping all the facts into view, I am of the opinion that ld. Tribunal ought to have assessed Rs.50,000/- per annum as income of the deceased. Accordingly, keeping in view the facts and circumstances of the case and balance sheet on record, Rs.50,000/- is considered as the annual income of the deceased on the date of accident. Keeping in view the dictum of the Apex Court in the case of Rajesh (Supra) and age of the deceased as 37 years at the time of accident, I award 50% towards future prospects.

9. While granting the compensation on non-pecuniary damages, Tribunal or the court has to see age of the person, his avocation and dependents and other facts and circumstances. In the present case, I am of the considered opinion that ld. Tribunal has granted compensation amount towards non-pecuniary heads on a very lower side.

10. Recently in the case of Rajesh (Supra), the Apex Court has granted Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards funeral expenses. Following the dictum of Rajesh (Supra), I am of the opinion that appellants are also entitled for the same amount towards the non-pecuniary heads. Accordingly, I grant Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards the funeral expenses.

11. Accordingly, the compensation amount comes as under: Sl. No.Heads of Compensation Compensation granted by Tribunal 1. Loss of dependency Rs.3,60,000/- 2. Towards loss of love Rs.20,000/and affection Rs.1,00,000/- 3. Towards loss consortium Rs.1,00,000/- 4. Compensation medical bills Conveyance Special Diet 5. MAC.APP No.397/2010 of Rs.10,000/- Compensation

ld. granted by this Court Rs.7,50,000/- for Rs.46,300/- Rs.46,300/- and Rs.20,000/- 5. Towards expenses funeral Rs.10,000/- TOTAL Rs.25,000/- Rs.4,66,300/- Rs.10,41,300/- (inadvertently, the tribunal granted Rs.4,66,630/-) 12. Accordingly, the enhanced compensation comes to Rs.5,74,670/- (Rs.10,41,300 - Rs.4,66,630).

13. The enhanced compensation amount also shall carry interest @ 8% per annum from the date of filing of the claim petition till its realization.

14. The respondent No.2/Insurance Company is directed to deposit the enhanced compensation amount with upto date interest accrued thereon with the Registrar General of this Court within a period of six weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% per annum on account of delayed payment.

15. On deposit, the Registrar General is directed to release the amount in favour of the claimants, i.e., appellants and respondent nos. 3 & 4 in the same proportion as awarded by the ld. Tribunal vide impugned award dated 19.12.2009.

16. In view of the above terms, the present appeal is allowed. SURESH KAIT, J.

JANUARY16 2014 Jg/sb