

Smt.Sushila Devi and ors. Vs. Naresh Kumar and anr.

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Court : Delhi

Decided On : Feb-06-2014

Judge : Suresh Kait

Appellant : Smt.Sushila Devi and ors.

Respondent : Naresh Kumar and anr.

Judgement :

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

6. h February, 2014 % + MAC.APP. 660-63/2006 SMT.SUSHILA DEVI & ORS. Represented by: Appellants Mr.O.P.Mannie, Advocate. Versus NARESH KUMAR & ANR. Represented by: Respondents Mr.Zahid Ali for Mr. A.K. De, Advocate for Respondent No.2. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned award dated 05.05.2006, whereby the learned Tribunal had granted compensation for a sum of Rs.30,76,000/- with interest at the rate of 8% per annum from the date of filing the petition till realization of the amount.
2. The present appeal has been filed for enhancement of the compensation amount noted above.

3. Learned counsel appearing on behalf of the appellants has argued that Naresh Kumar died in the accident occurred on 09.10.2003. On the said date, he was around 38 years old, as his date of birth was 15.01.1966. During the trial, mother of the deceased had expired and thereafter the remaining dependants were the widow, two minor sons and father of the deceased. He submitted that keeping in view the number of dependants, the learned Tribunal had deducted 1/3rd towards personal expenses.

4. Learned counsel submitted that though at the time of the death, there were five dependants, but mother of the deceased had died during the pendency of the trial, therefore, only four dependants were remained. Hence, considering the number of dependants, the learned Tribunal ought to have deducted 1/4th of the income of the deceased towards personal expenses instead of 1/3rd, which is contrary to the settled law.

5. Learned counsel for the appellants further submitted that the compensation granted by the learned Tribunal under non-pecuniary heads is on lower side. He submitted that for loss of consortium only Rs.15,000/- and for funeral expenses Rs.10,000/- had been granted. However, the learned Tribunal had not granted any compensation for loss of love and affection. The deceased was aged 38 years at the time of the accident and left behind widow at a young age, two minor sons and old parents.

6. In support of his submissions, he has relied upon the case of Vimal Kanwal & Ors. Vs. Kishore Dan & Ors., 2013 ACJ1441 wherein the Apex Court in an accident taken place on 14.09.1996 has granted for loss of consortium and loss to estate Rs.1,00,000/-, loss of love and affection for daughter Rs.2,00,000/- and loss of love and affection for the widow and the mother at Rs.1,00,000/- each, i.e., Rs.2,00,000/- and funeral expenses of Rs.25,000/-.

7. Learned counsel further submitted that the deceased died in the accident occurred on 09.10.2003. On the said date, he was 38 years old, as his date of birth was 15.01.1966. However, while awarding compensation, the learned Tribunal had wrongly applied the multiplier of 12, which is contrary to the dictum of the Supreme Court in the case of Sarla Verma Vs. DTC and Ors. 2009 (6)

SCC121 8. Learned counsel further argued that wife of the deceased had proved ITR as Ex. PW4/5 filed on 06.11.2003 showing income of the deceased as Rs.4,55,935/-, which pertains to the year 2003-04 and he died on 09.10.2003. Despite the fact noted above, while assessing loss of dependency, the learned Tribunal had taken the average of ITRs for the years 2000-01 and 2001-02 and accordingly, calculated the income of the deceased as Rs.2,50,000/- per annum.

9. Learned counsel has drawn the attention of this Court towards TDS certificate issued for the assessment year 2003-04, which is Ex.PW4/7. On perusal of the same, it is revealed that TDS Certificates from serial Nos. 1 to 15 were issued by MCD, wherein the appellant was a Contractor and 16th TDS was issued from Vatika Construction Pvt. Ltd. The total amount of TDS is shown as Rs.2,52,219/-. As per Ex.PW4/5, ITR for the year 2002-03, income of the deceased was Rs.4,55,935/-. However, while deciding the claim petition, the learned Tribunal had ignored this fact and considered the average income for the years 2000-01 and 2001-02 only.

10. On the other hand, learned counsel appearing on behalf of the respondent No.2/Insurance Company submitted that deceased Naresh Kumar died on 09.10.2003. While assessing the income of the deceased, the learned Tribunal had considered the income for the years 2000-01 and 2001-02 and accordingly calculated the income of the deceased as Rs.2,50,000/per annum.

11. He further submitted that Ex. PW4/5, showing income for the year 2002-03 was filed on 06.11.2003, i.e., after the death of the deceased. Therefore, the learned Tribunal had rightly not considered the said income relevant for assessing the annual income of the deceased. However, the learned Tribunal keeping in mind the facts and circumstances of the case granted just and fair compensation.

12. I have heard the learned counsel for the parties.

13. Undisputedly, while assessing the income of the deceased, learned Tribunal had taken the average of the income for the years 2000-01 and 2001-02, however, ignored the income for year 2002-03 on the ground that the same was filed on 06.11.2003, i.e., after the death of the deceased. The TDS Certificate Ex. PW4/7

issued for the assessment year 2003-04 shows amount of Rs.2,52,219/- and as per Ex.PW4/5, the total income of the deceased for the year 2002-03 was Rs.4,55,935/-. However, while calculating the loss of financial dependency of the claimants, the learned Tribunal had ignored Ex.PW4/5 noted above. Moreover, there is nothing on record to show that the income accrued with respect to the financial year 2002-03 was not earned by the deceased.

14. In the light of the above discussion and keeping in mind the concept of just and fair compensation, for calculating the loss of dependency, I take the average income of the last three years of the deceased, i.e., 2000-01, 2001-02 and 2002-03. Ex.PW4/25, shows income for the year 2000-01 as Rs.2,11,193/-, Ex.PW4/15, reflects income for the year 2001-02 as Rs.2,76,964/- and Ex.PW4/5, shows income for the year 2002-03 as Rs.4,55,935/-. On calculating the average income for the aforementioned period, it comes to Rs.3,14,697.30 [(Rs.2,11,193/- + Rs.2,76,964/- + Rs.4,55,935/-) i.e., Rs.9,44,092/- divided by 3). Therefore, the annual income of the deceased is assessed as Rs.3,14,697/-.

15. After going through the record, it is established that at the time of accident there were five dependants, i.e., widow, two minor sons and old parents. During trial of the claim petition, mother of the deceased had expired. Since there were five dependants on the date of accident, therefore, the learned Tribunal ought to have deducted 1/4 th of the income of the deceased towards personal expenses instead of 1/3rd.

16. Accordingly, considering the number of dependants, 1/4th of the income of the deceased is deducted towards personal expenses.

17. On the issue of multiplier, it cannot be disputed that the learned Tribunal had applied wrong multiplier of 12 contrary to the settled law by the Supreme Court in the case of Sarla Verma (supra). The deceased died at the age of 38 years in the accident and the learned Tribunal ought to have taken the multiplier of 15 while calculating the loss of dependency.

18. I order accordingly.

19. On perusal of the impugned award dated 05.05.2006, it is clear that the learned Tribunal had not granted any compensation for loss of love and affection. Admittedly, the untimely tragic death of the deceased in the accident had deprived the family members from his love and affection and irreparable loss has caused to the family. Claimant No.1 has lost her husband in young age and two minor children have lost the guidance and love and affection of their father and parents have lost their son instead of seeing his future and progress.

20. Recently, in the case of Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE563 the Full Bench of the Apex Court has granted Rs.1,00,000/- each on account of loss of love and affection and loss of consortium and Rs.25,000/- for funeral expenses. Taking all these aspects into consideration, aforementioned dictum of the Full Bench of the Apex Court and the age of the deceased, I grant Rs.1,00,000/- on account of loss of love and affection, Rs.1,00,000/- for loss of consortium and Rs.25,000/- towards funeral expenses.

21. Sr. No.I. II. III. Consequently, the compensation amount comes as under: Heads Calculation as Calculation as per MACT per this Court financial Rs.30,00,000/Rs.53,10,511.95 of the Loss of dependency claimants Expenses incurred Rs.51,000/towards the medical treatment, medicines and conveyance Loss of consortium Rs.15,000/- MAC.APP.660-63/2006 IV. Loss of love and Nil affection For funeral expenses Rs.10,000/- V. Total 22. Rs.30,76,000/- Rs.1,00,000/Rs.25,000/Rs.55,86,511.95 Accordingly, the enhanced compensation amount would come to Rs.25,10,511.95 (Rs.55,86,511.95 - Rs.30,76,000/-). The same is rounded to Rs.25,10,510/-.

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

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

25. On deposit, the Registrar General is directed to keep the enhanced compensation amount in the form of FDR in favour of claimants for a period of three years proportionately in terms of the award passed by the Ld. Tribunal.

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

FEBRUARY06 2014 Sb/jg

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