

Rakhi Devi and ors. Vs. Ashok Kumar and ors.

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Court : Delhi

Decided On : Feb-25-2014

Judge : Suresh Kait

Appellant : Rakhi Devi and ors.

Respondent : Ashok Kumar and ors.

Judgement :

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

25. h February, 2014 % + MAC.APP. No.684 /2013 RAKHI DEVI & ORS. Represented by: Appellants Mr.Navneet Goyal, Advocate. Versus ASHOK KUMAR & ORS. Represented by: Respondents Mr.Pankaj Kumar, Advocate for Respondent No.3/Insurance Company. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. The present appeal is preferred against the impugned award dated 22.04.2013, whereby the learned Tribunal has granted compensation for a sum of Rs.12,08,152/- with interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount.

2. This appeal is filed for enhancement of the compensation amount as noted above.

3. Learned counsel appearing on behalf of the appellants/claimants has argued that the accident had taken place on 28.12.2012. On the date of the accident, the deceased was 25 years of age. He was working as a Helper and earning Rs.10,000/- per month. The claimants could not prove the salary certificate of the deceased, therefore, the learned Tribunal has considered the salary of the deceased as Rs.8,008/- applicable to a non-matriculate as per the Minimum Wages Act, 1948. However, the learned Tribunal has erred in not adding any amount towards future prospect in the actual income of the deceased.

4. To strengthen his arguments, the learned counsel has relied upon a case of Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE563 wherein the Full Bench of the Apex Court has 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.

5. On the other hand, learned counsel appearing on behalf of the respondent No.3/Insurance Company has submitted that since deceased was not in permanent job, therefore, the learned Tribunal keeping in mind the dictum of Sarla

Verma & Ors.Vs. DTC & Anr., (2009) 6 SCC121, which has been further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr. delivered in Civil Appeal No.4646 of 2009 on 02.04.2013, has not added any amount in the actual income of the deceased towards future prospects.

6. The issue of future prospects has been considered by this Court in the case bearing MAC. APP. No.846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors., decided on 30.09.2013, wherein while relying upon the dictum of Rajesh & Ors. (supra), this Court added 50% of the actual income of the deceased towards future prospects.

7. Therefore, keeping in view the settled position of law and that the deceased was aged 25 years at the time of the accident, I grant 50% of the actual income of the deceased towards future prospects.

8. Learned counsel for the appellants/claimants further argued that the learned Tribunal has granted very less amount towards non-pecuniary benefits, such as Rs.25,000/- for loss of love and affection, Rs.10,000/- for loss of consortium and Rs.10,000/- for funeral expenses.

9. He further submitted that recently the Full Bench of the Apex Court in Rajesh & Ors. (supra) has awarded Rs.1,00,000/- each for loss of love and affection and loss of consortium and Rs.25,000/- for funeral expenses.

10. I find force in the submission of the learned counsel for the appellants/claimants.

11. Therefore, keeping in mind the aforesaid dictum of Rajesh & Ors. (supra), I enhance the compensation on account of loss of consortium from Rs.10,000/- to Rs.1,00,000/-, for loss of love and affection from Rs.25,000/to Rs.1,00,000/- and for funeral expenses from Rs.10,000/- to Rs.25,000/-.

12. Consequently, the compensation amount comes as under: Sl. No.Heads of Compensation 1.

2. Loss dependency Loss of estate Rs. 10,000/- Rs.

3. Loss of consortium Rs. 10,000/- Rs. 1,00,000/- 4. For funeral Rs. 10,000/expenses Loss of love and Rs. 25,000/affection TOTAL Rs.12,08,152/- 5. Compensation granted by Id. granted by this Tribunal Court of Rs.11,53,152/Rs.17,29,728/- Rs. 10,000/- 25,000/- Rs. 1,00,000/Rs.19,64,728/- Accordingly, the total compensation amount is assessed as Rs.19,64,728/-.

13. Resultantly, the enhanced compensation amount comes to Rs.7,56,576/- (Rs.19,64,728 - Rs.12,08,152).

14. The enhanced compensation amount shall carry interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

15. Accordingly, the respondent No.3/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 five weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% per annum on account of delayed payment.

16. On deposit, the Registrar General is directed to release the same in favour of the appellants/claimants proportionately in terms of the award dated 22.04.2013 passed by the learned Tribunal.

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

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