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M D, Panbas Vs. Reshma and ors.

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Court : Delhi

Decided On : Apr-02-2014

Judge : Suresh Kait

Appellant : M D, Panbas

Respondent : Reshma and ors.

Judgement :

$~19 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

2. d April, 2014 % + MAC.APP. 782/2013 M D, PANBAS Represented by: ..... Appellant Mr.Kamal Sharma, Advocate. Versus RESHMA & ORS. Represented by: ..... Respondents Mr.D.K.Sharma, Ms.Vandna Sharma and Mr.Ikram, Advocates for Respondent Nos. 1 to 6. Mr. Vikram Singh and Mr.Vinod Kumar, Advocates for Respondent No.7. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. The present appeal is preferred against the impugned award dated 29.04.2013, whereby the learned Tribunal has granted compensation for an amount of Rs.12,23,296/- with interest at the rate of 9% per annum from the date of filing of DAR petition till realization of the amount.

2. Mr.Kamal Sharma, learned counsel appearing on behalf of appellant submits that the negligence on the part of the respondent No.7, i.e., driver of the offending vehicle has not been established as there was no eye witness to the accident.

However, while awarding compensation, the learned Tribunal has relied upon the testimony of PW2, Ravinder Singh, who is a planted witness. He submits that neither in examination-in-chief nor during crossexamination, the said PW2 stated nothing with regard to the negligence on the part of the respondent No.3.

3. He further submits that as per the copy of the ration card placed on record, the learned Tribunal has considered the age of the deceased as 40 years at the time of the accident. He submits that since the original ration card was not produced before the learned Tribunal, therefore, copy of the same could not be considered as an authentic piece of evidence as per the Indian Evidence Act, 1872. Thus, age of the deceased has not been established and in the absence thereof, there was every possibility of deceased having more than 40 years of age on the date of the accident.

4. On negligence, the learned Tribunal had framed the following issue on 24.02.2012:

1. Whether Sh.Inder Prakash son of late Sh.Raghuvir Singh died due to road accident on 19.7.2011 at about 1.30 PM at GTK Road, Shani Mandir, near Yadu Green Farm House, Alipur within the jurisdiction of PS Alipur, Delhi involving offending vehicle No.PB05 8853?.

5. On perusal of the trial court record, it is established that PW2 in his evidence by way of affidavit stated that on 19.07.2012, he along with one Sh. Sandeep was going by Mahendra Champion bearing No.DL1 H4901from Mandoli to Narela for delivery of some goods as he was doing labour work. When the aforesaid vehicle reached in front of GTK Road, Shani Mandir near Yadu Green Farm House, Alipur, Delhi, suddenly the offending vehicle, i.e., Bus bearing No.PB05 8853, which was coming from backside without blowing horn, being driven by its driver on a very high speed, rash and negligent manner, hit the Mahendra Champion, due to which driver, Narender Singh Tomar (brother of PW2) died on the spot and deceased Inder Prakash, sustained grievous injuries.

6. Thereafter, the deceased Inder Prakash was taken to BJRM Hospital and later on 23.07.2011, he was shifted to Sunder Lal Jain Hospital, Ashok Vihar, Delhi,

however, expired on 19.10.2011.

7. Moreover, an FIR No.244/11 under Sections 279/337/304-A IPC was lodged at P.S. Alipur, against the respondent No.7.

8. In view of the evidence on record, there is no an iota to discard the testimony of PW-2.

9. As far as the issue of age of the deceased is concerned, the respondents/claimants have placed on record the copy of the ration card. As per which, age of the deceased has been established as 40 years. However, the appellant neither led any evidence nor examined any witness contrary thereto.

10. In view the facts noted above and evidence on record, I do not find any merit in the instant appeal. The same is accordingly dismissed.

11. At this stage, learned counsel appearing on behalf of the respondents/claimants submits that the Appellate Court has to see whether the compensation granted by the learned Tribunal is just and fair. If not, this Court has power to enhance the same.

12. He further submits that in the present case, the deceased died at the age of 40 years. Since the respondents/claimants could not prove the employment/ earning of the deceased, therefore, the learned Tribunal has assessed his monthly income as Rs.6,422/- applicable to an unskilled person at the prevalent time as per the Minimum Wages Act, 1948, but not added any amount in the actual income of the deceased towards future prospects.

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

14. Learned counsel further submits that the deceased died at the young age of 40 years, left behind six dependants, including young widow, two sons and three daughters. Despite that the learned Tribunal has granted Rs.10,000/- each on account of loss of consortium and funeral charges, which is on a lower side.

15. Mr. Kamal Sharma, learned counsel appearing on behalf of the appellant submits that since the respondents/claimants have failed to prove the permanent employment of the deceased, therefore, keeping in view 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 Reshma Kumari & Ors. Vs. Madan Mohan & Anr. delivered in Civil Appeal No.4646 of 2009 on 02.04.2013, the learned Tribunal has rightly not added any amount in his income towards future prospects.

16. On the issue of non-pecuniary damages, Mr.Sharma, learned counsel for the appellant submits that keeping in view the facts and circumstances of the case, the learned Tribunal has granted substantial amount towards the same.

17. I have heard learned counsel for the parties and have perused the record.

18. As regards the issue of future prospects is concerned, the same has been dealt with 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, while relying upon the dictum of the Apex Court in Rajesh & Ors. (supra).

19. Therefore, keeping in view the settled position of law and the age of the deceased, i.e., 40 years at the time of the accident, I add 50% in the actual income of the deceased towards future prospects.

20. Admittedly, the deceased died at the young age of 40 years. Due to untimely tragic death of the deceased in the accident, the respondent No.1/wife lost the association of her husband and all pleasures of life, and respondent Nos. 2 to 5 have lost the love, affection, care and guidance of their father causing irreparable loss to them.

21. Therefore, keeping into mind all the facts and circumstances of the case and following the dictum of Rajesh & Ors. (supra), I enhance the compensation on account of loss of consortium to Rs.1,00,000/- and for funeral charges to Rs.25,000/-.

22. Accordingly, the compensation amount comes as under: Sl. No.Heads of Compensation 1.

2. Pecuniary Damages: Loss of dependency Funeral charges Rs.8,66,870/Rs. 10,000/- Rs.13,00,455/Rs. 25,000/- 3. Loss of estate Rs. 10,000/- Rs. 10,000/- 4. Loss of consortium Rs. 10,000/- Rs.1,00,000/- 5. Medical expenses Rs.2,01,326/- Rs.2,01,326/- MAC.Appeal No.782/2013 Compensation Compensation granted by ld. granted by this Tribunal 6.

7. Non Pecuniary Damages: Loss of love, company and Rs.1,00,000/affection etc. Loss of gratuitous services Rs. 25,000/- Rs.1,00,000/- TOTAL Rs.17,61,781/- Rs.12,23,296/- Rs. 25,000/- 23. Resultantly, the total compensation is assessed as Rs.17,61,781/-.

24. Accordingly, an amount of Rs.5,38,485/- is enhanced (Rs.17,61,781/- - Rs.12,23,296/-).

25. The enhanced compensation shall carry interest at the rate of 9% per annum from the date of filing of the DAR petition till its realization.

26. Accordingly, the appellant is directed to deposit the enhanced compensation with up-to-date interest accrued thereon with the Registrar General of this Court within a period of five weeks from today, failing which, respondents/claimants shall be entitled for penal interest at the rate of 12% per annum on account of delayed payment.

27. On deposit, the Registrar General is directed to release the amount in favour of the respondents/claimants in terms of the award dated 29.04.2013 passed by the learned Tribunal.

28. In view of the above, the appeal is disposed of. SURESH KAIT, J.

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