

Nisha &Anr vs.gaurav Sharma & Ors (Icici Lombard General Ins Co Ltd)

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Court : Delhi

Decided On : Oct-12-2018

Appellant : Nisha &Anr

Respondent : Gaurav Sharma & Ors (Icici Lombard General Ins Co Ltd)

Judgement :

\$~26 * % + MAC.APP. 38/2018 NISHA &ANR IN THE HIGH COURT OF DELHI
AT NEW DELHI Date of Decision:

12. h October, 2018 Through: Mr.S.N. Parashar, Advocate Appellants 1.
versus GAURAV SHARMA & ORS (ICICI LOMBARD GENERAL INS CO LTD)

... RESPONDENTS

Through: Mr.Sandeep Jha, Advocate for R-4 CORAM: HON'BLE MR. JUSTICE
J.R. MIDHA JUDGMENT (ORAL) The appellants have challenged the Award of
the Claims Tribunal whereby the compensation of Rs.27,10,360/- has been
awarded to them. The appellants seek enhancement of compensation amount.

2. The accident dated 14th January, 2012 resulted in the death of Ankit Gupta.
The deceased was aged 31 years at the time of the accident and was survived by
his widow and his parents who claimed the compensation. The deceased was self-
employed and was earning Rs.1,99,259/- per annum.

3. The Claims Tribunal took the income of the deceased as Rs.1,60,960/- per
annum, added 50% towards future prospects, deducted 1/3rd towards his personal

expenses and applied the multiplier of 16 to compute the loss of dependency as Rs.25,75,360/-. The Claims Tribunal awarded Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection. Total compensation MAC.APP. 38/2018 Page 1 of 4 awarded is Rs.27,10,360/-.

4. Learned counsel for the appellants urged at the time of hearing that the income of the deceased as per the Income Tax Return for the year 2011- 12 was Rs.1,99,259/- per annum and the Claims Tribunal erred in taking the income of the deceased as Rs.1,60,960/- per annum on the basis of the Income Tax Return for the previous year of 2010-11. It is submitted that the income of the deceased be taken as Rs.1,99,259/- per annum instead of Rs.1,60,960/- per annum.

5. Learned counsel for the respondents urged at the time of the hearing that the future prospects be reduced from 50% to 40% and the compensation amount of Rs.1,00,000/- towards the loss of love and affection is not a permissible head. It is further submitted that the non-pecuniary compensation be reduced to Rs.70,000/- (Rs.40,000/- for loss of consortium + Rs.15,000/- towards loss of estate + Rs.15,000/- towards funeral expenses) in terms of principles laid down in National Insurance Co. Limited vs. Pranay Sethi and Ors. 2017 SCC Online SC1270 6. There is merit in the contentions urged by learned counsels for the parties. The Claims Tribunal erred in taking the income of the deceased as Rs.1,60,960/- per annum on the ground that the Income Tax Return for 2011-12 was filed after the death of the deceased. This Court is of the view that the income of the deceased has to be taken into consideration according to the Income Tax Return for the year 2011-12. The income of the deceased is taken as Rs.1,99,259/- per annum.

7. The Claims Tribunal has awarded Rs.1,00,000/- towards the loss of love and affection which is no more a permissible head and is therefore, set aside. The future prospects are reduced from 50% to 40% and non-pecuniary MAC.APP. 38/2018 Page 2 of 4 compensation is reduced to Rs.70,000/- (Rs.40,000/- towards loss of consortium + Rs.15,000/- towards loss of estate + Rs.15,000/- towards funeral expenses).

8. Taking the income of the deceased as Rs.1,99,259/- per annum, adding 40% towards future prospects, deducting 1/3rd towards the personal expenses and applying the multiplier of 16, the loss of dependency is computed as Rs.29,75,601.07. Adding Rs.70,000/- (Rs.40,000/- for loss of consortium + Rs.15,000/- towards loss of estate + Rs.15,000/- towards funeral expenses) towards non-pecuniary compensation, the total compensation is computed as Rs.30,45,601.07, rounded off to Rs.30,45,650/-.

9. The appeal is allowed and the compensation awarded by the Claims Tribunal is enhanced from Rs.27,10,360/- to Rs.30,45,650/- along with interest at the rate of 9% per annum from the date of filing of the petition i.e. 21st September, 2012.

10. Respondent No.4 is directed to deposit the enhanced award amount along with upto date interest with the Registrar General of this Court within four weeks.

11. The Claims Tribunal has held the share of the parents (appellants) to be 80% and the share of the widow (respondent No.5) as 20% on the ground that the widow remarried after the accident. Respondent No.5 has filed MAC APP. 151/2018 which is also listed today. The challenge of respondent No.5 for enhancement of her share shall be considered in MAC APP. 151/2018.

12. The appellants shall remain present in Court on the next date of hearing along with all the FDRs issued in terms of the award dated 06th September, 2017. MAC.APP. 38/2018 Page 3 of 4 13. List on 07th December, 2018.

14. Copy of this judgment be given dasti to counsels for the parties under signature of Court Master. OCTOBER12 2018 ds J.R.MIDHA, J.

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