Smt. Nirmala Devi and anr. Vs. General Manager and ors.

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SooperKanoon Citation : sooperkanoon.com/684056

Court : Delhi

Decided On : Jan-29-2008

Reported in : 2008ACJ1254

Judge : Kailash Gambhir, J.

Acts : Motor Vehicles Act; Minimum Wages Act

Appeal No. : M.A.C. A.P.P. No. 904-05 of 2005

Appellant : Smt. Nirmala Devi and anr.

Respondent : General Manager and ors.

Advocate for Def. : A.S. Baath, Adv. for Respondents No. 1, 2 and 3 and ; Sikander Ali, Adv. for Respondent No. 4

Advocate for Pet/Ap. : F.K. Jha, Adv

Judgement :

Kailash Gambhir, J.

1. By way of the present appeal, the appellant seeks to challenge the impugned Award dated 3.9.2005 whereby a sum of Rs. 3,50,000/- has been awarded in favor of the appellants and respondent No. 4. The appellants who are parents of the deceased have claimed enhancement in the compensation amount over and

above the amount as awarded by the Tribunal. Brief summary of the facts of the case to deal with the contentions of the parties are:

That on 24th September, 2003 at about 5.00 p.m. the deceased Om Singh @ Rinku with his father was crossing road Near C. Lal and Sons Gas Agency, outer Ring Road,Delhi when in the meantime a bus bearing No. PB-06-B-3510 being driven by Bakhsis Singh came from wrong side in a rash and negligent manner and hit the deceased. As a result of the accident he fell down and right wheel of the bus passed over his head and he died on the spot. Respondent No. 4 has filed a claim petition before the Tribunal.

2. Counsel appearing for the appellants has mainly raised four contentions. The first grievance of the appellant is that the Tribunal has not correctly assessed the income of the deceased. The contention of the counsel for the appellant is that the deceased was earning a sum of Rs. 4,000/- Rs. 5,000/- per month being employed with the contractor of the gas agency and the said income was duly proved by the appellants, but still the Tribunal has ignored the testimony of the witnesses adduced by the appellants and whimsically determined the income at Rs. 2000/- per month. The second grievance of the appellant is that the future prospects of the deceased have not been granted taking into account correct income by the Tribunal. The third contention of the counsel for the appellant is that the appropriate multiplier as laid down in the Second Schedule of the Motor Vehicles Act has not been applied by the Tribunal. The deceased was 24 years of age at the relevant time of the accident and he is survived by his young widow besides the dependent parents and thereforee, appropriate multiplier as per the second Schedule of the Motor Vehicles Act is 18 and not 14 as applied by the Tribunal. The fourth contention of the counsel for the appellant is that no amount towards pain and sufferings, loss of love and affection and loss to estate has been granted by the Tribunal. Even a sum of Rs. 5,000/- awarded by the Tribunal towards funeral expenses is quite meager. Counsel appearing for respondent No. 4 submits that he has no objection if the awarded amount as claimed is enhanced. He, however submits that respondent No. 4 is a young widow and thereforee, adequate provision in the enhancement be also made in favor of respondent No. 4.

3. Counsel appearing for respondents No. 1 to 3 has contested the present appeal. The counsel submits that the Tribunal has granted a fair compensation to the appellants keeping in view the facts of the case. Counsel also submits that the appellants never came forward to file the claim petition and it was only the widow of the deceased at whose instance the claim petition was filed and who alone is entitled to claim enhancement. Counsel thus contends that since wife of the deceased has not chosen to challenge the said Award, thereforee, no enhancement be made by entertaining the present appeal, which has been filed by the parents of the deceased. With regard to the income aspect the counsel contends that the deceased was not working in a particular firm and his job with the contractor was not on regular basis, thereforee, resort to Minimum Wages Act cannot be taken. Counsel further contends that in the absence of any cogent evidence led by the claimant the Tribunal has correctly assessed the income of the deceased at Rs. 2,000/- per month. Counsel for respondents No. 1 to 3 further contends that even in the prayer made in the present appeal the appellants have not sought any enhancement in the compensation. The appellants have merely sought modification of the Award as per prayer (i) of the the memorandum of appeal and in prayer (ii) they have sought stay of the encashment of cheque amount awarded in favor of the widow of the deceased i.e. respondent No. 4. Counsel thus contends that once the enhancement is not sought by the appellants no such relief can be given to the appellant.

4. I have heard learned Counsel for the parties and have perused the record. Perusal of the Award shows that the Tribunal has determined the income of the deceased at Rs. 2,000/- per month after taking into consideration the average delivery of 10-15 cylinders a day @ Rs. 5/- per cylinder. There were some contradictions in the deposition made by PW-2, PW-3 and PW-4 as there was no categorical statement made in the deposition of the contractor as to how many cylinders the deceased was handling in a particular day. The deceased was employed as a delivery boy and no dispute as regards the nature of the job of the deceased has been raised. The job of delivery boy can be taken to be a job of the unskilled worker and in all those cases where there is no reliable or cogent evidence placed on record by the claimants to prove the income of the deceased the safest course in such like cases is to take the help of the Minimum Wages Act

for assessing the income of a victim of the accident. I do not find myself in agreement with the arguments raised by counsel for respondents No. 1 to 3 that since the deceased was not having regular or permanent service with one employer, thereforee, recourse to the Minimum Wages cannot be made. The deceased was a delivery boy working with a contractor and the said contractor in his deposition has categorically stated that the deceased was employed with his gas agency for about past 5? 6 years. Even otherwise to claim wages under the Minimum Wages Act for the purposes of the Motor Accident Claim cases the employment of such workman with a particular employer is not the requirement of the law.

5. In the aforesaid circumstances, I feel that in the absence of any reliable evidence placed by the claimants of the compensation case to prove monthly income of the deceased, resort can be made to the Minimum Wages Act. On the relevant date of the accident i.e. 3.9.2005, Minimum Wages for unskilled workman were Rs. 3325/- per month. Once recourse have been made to the Minimum Wages Act then future increase in the Minimum Wages has also to be considered. In the present case the Tribunal has already granted future increase, but by taking into consideration the income of the deceased at Rs. 2,000/- per month. It is a matter of common knowledge that minimum wages under the Minimum Wages Act gets doubled within a span of 10 years and, thereforee, taking into consideration the age of the deceased and all the dependent members including the widow the minimum wages of Rs. 3325/- would get doubled to Rs. 6650/- within the period of the multiplier and taking an average of the same the monthly income of the deceased would come to Rs. 4987.50. Deducting 1/3rd expenses from the same the average monthly income of the deceased would come to Rs. 3325/-. The appellants have claimed age of the deceased as 24 years, but no such evidence to prove the said age was placed on record. In the postmortem report the age of the deceased was disclosed as 30 years and, thereforee, in the absence of any other evidence the age as stated in the postmortem report has to be believed. The deceased is survived by his widow, who was of 25 years of age as per the photocopy of the ration card placed on the Trial Court record. The appellants, however, have not placed the exact age of the parents so as to correctly apply the multiplier. The Tribunal has applied multiplier of 14 considering the age of the

deceased as 30 years. In any case of the matter, it is not in dispute that the deceased was survived by his young widow and major portion of the Award has been granted in her favor and if the age of the deceased and that of the dependent widow is taken into consideration, then the appropriate multiplier as laid down in the second Schedule of the Motor Vehicles Act would be 18 and not 14, but since the appellants have not disclosed the age of the parents of the deceased, thereforee, it would be difficult to apply the said multiplier of 18 only after considering the age of the deceased. Taking the over all view of the matter, I consider that the appropriate multiplier in place of 14 can be 15, which is between the age group of 40 and 45 years. The exact multiplier as laid down in the second Schedule of the Motor Vehicles Act can not be applied in the absence of any evidence led by the appellants with regard to the exact age of the parents of the deceased. The total loss of dependency after applying multiplier of 15 would come to Rs. 5,98,500/-.

6. The Tribunal has awarded a sum of Rs. 5,000/- towards funeral and last rites and I do not feel inclined to interfere in the same. The Award of Rs. 10,000/- to the petitioner on account of loss of consortium, however, is quite insufficient. Although, no challenge has been made by respondent No. 4 to claim any enhancement in the compensation, but still since this Court is considering the enhancement in the present appeal, thereforee, adequate provision towards loss of consortium has to be made. I, thus enhance the compensation of Rs. 10,000/- to Rs. 50,000/- on account of loss of consortium. No compensation for pain and suffering can be given in a case where the victim of the accident has died himself. In any case of the matter, the appellants are entitled to some compensation amount towards loss of love and affection. Rs. 25,000/- is awarded in favor of the claimants towards loss of love and affection and Rs. 20,000/- towards loss of estate. Perusal of the Award also shows that the Tribunal has awarded lower rate of interest @ 6%. The same is increased from 6% to 7.5%. As regards the contention of the counsel for respondents No. 1 to 3 that in the prayer para of the appeal no such relief of enhancement has been claimed, I do not find force in the submission of the counsel for respondents No. 1 to 3 as in the entire appeal the grievance has been made to claim enhancement in the compensation amount. In the prayer para the appellants have sought modification of the impugned Award and the said

modification being sought by the appellant also includes enhancement.

7. Respondents No. 1 to 3 shall pay the differential enhancement amount along with up to date interest @ 7.5% from the date of filling of the petition till realization. The appeal is remanded back to the Tribunal for apportionment of the Award. Parties to appear before the Tribunal on 13th February, 2008. With these directions the appeal is disposed of.