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Court : Delhi

Decided On : Apr-23-2002

Reported in : 2004ACJ222; 2002VIAD(Delhi)615; 98(2002)DLT407; 2002(63)DRJ397

Judge : R.C. Chopra, J.

Appeal No. : FAO 31/1997

Appellant : Smt. Saroj Devi and ors.

Respondent : Rameshwar and ors.

Advocate for Def. : Salil Paul, Adv.

Advocate for Pet/Ap. : Rajiv Ranjan, Adv

Disposition : Appeal allowed

Judgement :

R.C. Chopra, J.

1. The appellants, feeling aggrieved by an order dated 25.1.1996 passed by learned MACT, have filed this appeal for enhancement of compensation awarded to them on account of the death of Shri Hans Raj who met with a fatal accident on 10.5.1993. The appellants contend that the learned Trial Judge had not taken into

consideration the prospects of future increase in the income of the deceased. They also submit that a higher multiplier ought to have been applied for computing the compensation payable to them.

2. I have heard learned counsel for the appellants and learned counsel for respondent No. 3. None appeared for respondents 1 and 2 in spite of notice. I have gone through the records of the case.

3. The appellants in support of their claim had examined the widow of the deceased as PW3 who stated that the deceased was running a cycle repair shop at his residence itself and was earning about Rs. 2000/- per month. She also stated that he was aged about 38 years at the time of his death and gave details of seven young children as well as old parents left behind by the deceased. In her cross examination, she denied that the deceased was not earning Rs. 2000/- per month. PW 4 Shri Ved Pal deposed that the income of the deceased was about Rs. 2000/- or 2500/- per month and stated that he used to get his cycle repaired from him. However in his cross examination he stated that it was the deceased only who used to tell him that his income was about Rs. 80 per day and as such he took his words as true and had made a statement regarding his income. Learned Trial Judge did not believe the claimants evidence that the income of the deceased was Rs. 2000/- per month but upon an estimated basis assessed his income at Rs. 1500/- per month. After deducting 1/3 of the income towards the personal expenses of the deceased he assessed the annual financial support to the appellants at Rs. 12,000/- and after applying a multiplier of 14 awarded a compensation of Rs. 1,68,000/- to the appellants.

4. In view of the evidence on record, this Court has no good grounds of taking a different view in regard to the monthly income of the deceased as well as selection of multiplier for assessing the compensation payable to the appellants but this Court is of the considered view that the income of the deceased would not have remained static at Rs. 1500/- per month only for the rest of his life. The prospects of future increase in the income of the deceased ought to have been taken into consideration for assessing the financial loss to the family and computing the compensation payable to them. It is all the more necessary for the reason that with

the rise in the prices and inflationary trends both the income and expenditure keep on increasing simultaneously and in case the prospects of future increase in the income are not taken into consideration, the family of a deceased is left high and dry by incurring higher expenditure with the passage of time on account of rise in the prices but getting compensation based only at the last income of the deceased without any addition on account of the prospects of increase. This Court, therefore, has no hesitation in holding that prospects of future advancement in the career and increase in the income of the deceased must be taken into consideration while computing the compensation payable to legal representatives. In the case of a deceased belonging to a salaried class, the average monthly income of a deceased can be easily calculated by considering the pay which he was drawing at the time of his death and the last pay which he could have drawn at the time of his retirement. The reasonable prospects of his promotions may also be kept in mind. In case of a self employed professional also the future advancement of career and increase in income can be assessed on estimated basis. If the income of the deceased at the time of his death was low the Court may assume 2/3 times increase in his income by the time he would have stopped working. However, in case of self employed deceased, having a high income future increase can be estimated at a lower level as expected optimum raise has its own limits. In the case of a businessman also the increase in the future income has to be visualized with due care and circumspection for the reason that a businessman usually faces more uncertainties and ups and downs in the course of his business.

5. The Apex Court in the cases of Donat Louis Machada and Ors. v. Ravindra and Ors. reported in 2 (2000) ACC 602 (SC), General Manager Kerala State Transport Corporation v. Susamma Thomas reported in : AIR 1994 SC1631 and Smt. Sarla Dixit v. Balwant Yadav and Ors. reported in : (1993)ILLJ664SC , took into consideration the prospects of the advancement of the career of the deceased and computed the compensation accordingly. therefore, this Court is of the considered view that even if the income of the deceased at the time of his death in the year 1993 was Rs. 1500/- per month only it could not have remained static and would have certainly increased with the passage of time. It can be reasonably assumed that by the time of his retirement from his vocation the income of the

deceased would have gone up to atleast Rs. 4500/- per month. After adding his last income of Rs. 1500/- per month to his estimated future income of Rs. 4500/-, the total amount of 6,000/- can be reduced by 50% to reach at the mean figure which can be taken as the average income of the deceased during the entire span of his working career.

6. On the basis of Rs. 3000/- per month the annual income of deceased comes to Rs. 36,000/- to which the multiplier of 14 as selected by the learned Trial Judge can be applied. This brings the total income to Rs. 5,04,000/- out of which 1/3 the deceased would have spent upon himself. The balance 2/3 of Rs. 5,04,000/- would have been available to his dependant family members as total financial support from him. This amount comes to Rs. 3,36,000/-. This Court, therefore, is of the considered view that the amount of compensation payable to the appellants ought to have been Rs. 3,36,000/- and not Rs. 1,68,000/- as computed by the learned Trial Judge.

7. The appeal is, therefore, allowed and the amount of compensation payable to the appellants is enhanced to Rs. 3,36,000/-. After deducting the amount already paid out of Rs. 3,36,000/- which is inclusive of the amount paid to the appellants under Section 140 of the Act the balance amount should be paid to the appellants by respondent No. 3. The appellants are entitled to interest also @ 9 per cent per annum on the enhanced amount from the date of the filing of the petition till the date of this order. The balance shall be paid by insurer respondent No. 3 within two months of the date of this order failing which future interest @ 9 per cent per annum shall become payable to the appellants from the date of this order till realisation.

8. The apportionment and disbursement of the enhanced amount in favor of the appellants is left to the discretion of the learned Trial Judge who after giving a hearing to learned counsel for the appellants shall pass appropriate orders in regard to the release of the amount or deposit thereof in fixed deposits as deemed fit.