

Saroj Devi and ors. Vs. Sunil Kumar and ors.

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Court : Delhi

Decided On : Feb-11-2009

Reported in : 2009ACJ2096

Judge : J.R. Midha, J.

Acts : Motor Vehicles Act

Appeal No. : M.A.C. Appeal Nos. 753-757 of 2005

Appellant : Saroj Devi and ors.

Respondent : Sunil Kumar and ors.

Advocate for Def. : S.L. Gupta and; R.L. Kadamb, Advs.

Advocate for Pet/Ap. : Ashok Popli, Adv

Disposition : Appeal allowed

Judgement :

J.R. Midha, J.

1. The appellants have challenged the award dated 6.5.2005 of the learned Tribunal whereby the compensation of Rs. 7,33,488 was awarded to them. The appellants seek enhancement of the compensation.

2. On 15.7.2003, deceased Sultan Singh was walking on the road near Bus Stand, Sanjay Enclave, Jahangirpuri, Delhi when he was hit by a truck bearing No. DL 1-G 9481 driven rashly and negligently by its driver causing grievous injuries which resulted in his death.

3. The deceased was aged 48 years at the time of accident and was working as a conductor in D.T.C. drawing a salary of Rs. 8,367 per month.

4. The deceased was survived by his wife, one daughter, two sons and mother who filed the claim petition before the learned Tribunal. Appellant No. 1 appeared in the witness-box as PW 4 and deposed that the deceased was earning Rs. 8,500-Rs. 9,000 per month as salary. Senior clerk of D.T.C, PW 3, appeared in the witness-box and proved the certificate of salary as Exh. PW3/A. In cross-examination, PW 3 deposed that the deceased had taken a loan from the provident fund which was being repaid by deduction from the salary. The balance loan in July 2003 was Rs. 1,500. The monthly instalment towards repayment of the loan was Rs. 500 per month. The deceased was also repaying Rs. 2,315 per month for the loan taken from Welfare Society of D.T.C. The deduction towards provident fund was Rs. 800 per month and the net amount being paid to the deceased was Rs. 3,998 per month.

5. The break-up of the salary of the deceased as per Exh. PW3/A is as under:

Basic salary	Rs. 4,300	D.A.	Rs. 2,537	H.R.A.	Rs. 1,290	CCA.	Rs. 125	Washing allowance	Rs. 15	Medical allowance	Rs. 100	Total	Rs. 8,367
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6. The learned Tribunal has taken the salary of the deceased at Rs. 4,798 for the purpose of computation of compensation.

7. The first ground of challenge in this appeal is that the income of the deceased as Exh. PW3/A is Rs. 8,367 out of which only Rs. 15 towards washing allowance has to be deducted and the income of the deceased be taken as Rs. 8,352 at the time of his death. It is submitted that the learned Tribunal wrongly allowed the deduction of loan repayments and provident fund from the salary of the deceased.

7. I have perused the statement of PW 3 and salary certificate, Exh. PW3/A. The salary of the deceased was Rs. 8,367 per month out of which Rs. 15 has to be deducted towards the washing allowance. The repayment of the loan and provident fund cannot be deducted for computation of income of the deceased. For the purpose of computing the loss of dependency, the salary of the deceased is Rs. 8,352 per month. The remaining findings of learned Tribunal relating to the deduction of 1/3rd salary as personal expenses of the deceased and the multiplier of 13 for computation of compensation are correct and are upheld. The computation of compensation shall be as under:

Income = [Rs. 8,352 + (Rs. 8,352 x 2)] + 2 = Rs. 12,528.

Deduction towards personal expenses = 1/3rd of Rs. 12,528 = Rs. 4,176.

Loss of dependency = (Rs. 12,528 - Rs. 4,176) x 12 x 13 = Rs. 13,02,912.

9. Next ground of challenge is that Rs. 10,000 has been awarded towards loss of consortium and Rs. 10,000 has been awarded towards loss of love and affection which are on a lower side. In the recent judgment in the case of United India Insurance Co. Ltd. v. Sulochana : 2008 ACJ 1818 (Madras), Madras High Court has awarded Rs. 50,000 towards loss of consortium and Rs. 25,000 each to mother and daughter for loss of love and affection.

10. It is noted that the learned Tribunal has awarded Rs. 10,000 under the head of loss of expectancy of life of the deceased. No compensation is payable under this head and, therefore, the compensation under this head be treated to be under the head of loss of love and affection. The compensation for loss of love and affection is enhanced from Rs. 20,000 to Rs. 50,000 and the compensation towards loss of consortium is enhanced from Rs. 10,000 to Rs. 50,000. Rs. 5,000 awarded for funeral expenses by learned Tribunal is upheld.

11. Learned Counsel for the respondents submits that the compensation under the Motor Vehicles Act has to be just and reasonable and it should not be more than Rs. 10,00,000 in this case. He further submits that the interest on enhanced amount would be more than the salary of the deceased and, therefore,

enhancement should not be permitted.

12. It may be noted that the respondent has neither filed the appeal nor the cross-objections in this case. The respondent has also not challenged the multiplier and other findings of the learned Tribunal. The findings of the learned Tribunal except with respect to computation of monthly income and the compensation for loss of consortium and loss of love and affection cannot be interfered in this appeal. So far as the computation of monthly income is concerned, the finding of the learned Tribunal is erroneous and is, therefore, being interfered to the limited extent of disallowing the erroneous deduction. So far as the compensation for loss of consortium and loss of love and affection is concerned, these are non-pecuniary damages and in order to maintain uniformity, the amount being awarded by the courts should be uniformly adopted and, therefore, to that extent the compensation under the two heads has been enhanced. So far as the argument of learned Counsel that the awarded amount is high, I do not agree with this submission. It has to be noted that the deceased was an employee of a public corporation and the salaries have become more than double by the implementation of the Sixth Pay Commission and if the total compensation is viewed from that point, it may still fall short of the present salary structure.

13. The appeal is, therefore, allowed. The award of the learned Tribunal is enhanced from Rs. 7,33,488 to Rs. 14,07,912 (Rs. 13,02,912 + Rs. 50,000 + Rs. 50,000 + Rs. 5,000). The share of the appellants shall be in the same proportion in which the learned Tribunal had passed the award.

14. The interest on the enhanced amount shall be from the date of filing of the appeal till realization. The enhanced amount be deposited with the learned Tribunal within four weeks, out of which 50 per cent be released to the appellants and remaining 50 per cent shall remain in fixed deposit with nationalised bank for a period of five years but the interest be released to the appellant No. 1.

15. The appeal is disposed of.

16 Copy of this order be given dasti to counsel for both the parties under signatures of Court Master.

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