Shri Deep Chand and anr. Vs. Shri Parmod Kumar Tyagi and ors.

Shri Deep Chand and anr. Vs. Shri Parmod Kumar Tyagi and ors.

SooperKanoon Citation : sooperkanoon.com/714817

Court : Delhi

Decided On : Nov-01-2007

Reported in : 147(2008)DLT268

Judge : Kailash Gambhir, J.

Acts : Minimum Wages Act; Motor Vehicles Act - Sections 168

Appeal No. : MAC. APP. Nos. 704-05/2006

Appellant : Shri Deep Chand and anr.

Respondent : Shri Parmod Kumar Tyagi and ors.

Advocate for Def. : S. Sirish Kumar, Advs. for respondents Nos. 2 and 3

Advocate for Pet/Ap. : Yogendra Gautam, Adv

Judgement :

Kailash Gambhir, J.

1. By way of this appeal, the appellant seeks to challenge the impugned Award mainly on the ground that the Tribunal has not considered the future prospects of the deceased, who was brilliant student and in the near future would have progressed in his life. The appellant also averred that the Tribunal has awarded a nominal amount for funeral expenses and loss of love and affection i.e. Rs.

10,000/- each besides that the Tribunal has also awarded an interest at a quite lower rate i.e. 5.5% per annum from the date of the filing of the petition.

2. The brief facts of the case relevant for present appeal are that on 23.10.1995 at about 8.45 p.m. the deceased aged about 13 years was playing with the crackers in front of his house at Sawan Park Road, Ashok Vihar, Delhi, when respondent No. 1 driving the truck in most negligent and rash manner came from Sunder Lal Jain Hospitals direction and rammed the front tyre of the truck into the deceased and crushed the deceased. When the deceased was rushed to the hopsital, he ws declared 'brought dead' by the hospital authorities. A claim petition was filed by the present appellants on 1.2.1996 and award was passed on 16.5.2006. Aggrieved with the said award present appeal is preferred by the appellants/claimants.

3. I have heard learned Counsel for the parties. Mr. Yogendra Guatam, counsel appearing for the appellant contends that the progress report of 4th ,6th and 7th standard of the deceased was placed on record and even the certificate certifying the grant of meritorious scholarship in 6th standard was duly proved on record as Ex. PW1/9, but still the Tribunal has not taken into account the aspect of future growth and progress of the deceased. The counsel also contends that a bare and minimum Award towards loss of love and affection in a sum of Rs. 10,000/- has been granted by the Tribunal and similarly a Lesser amount of Rs. 10,000/- has been awarded for funeral expenses. Counsel also contends that grant of interest @ 5.5% is on the lower side and the same has also not been awarded as per the recent judgments of this Court as well as of the Hon'ble Supreme Court of India.

4. Mr.S. Sirish Kumar, counsel appearing for the respondent on the other hand states that there is no infirmity or illegality in the impugned order passed by the Tribunal. As per the counsel for the respondent the Award is already excessive in favor of the appellants. The counsel contends that the child is of 13 years of age, but still the notional income as per the Minimum Wages Act @ Rs. 2000/- per month was taken into consideration. Counsel also justified the finding of the Tribunal as far as the expanses awarded towards the funeral and loss of love and affection are concerned. Counsel also justified the said low rate of interest on the ground that the Tribunal has already granted higher amount towards loss of

income.

5. No amount of compensation can mitigate the sufferings of the parents and the family members. However, while awarding compensation the Tribunal has to see whether the same is just, fair and equitable. The compensation should neither be a bonanza nor look like granting peanuts only. In this regard, in the judgment entitled Divisional Controller, KSRTC v. Mahadeva Shetty : AIR 2003 SC4172 of the Apex Court, following observations have been made by the Hon'ble Apex Court:

15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just', a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and

arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just. (See Helen C. Rebello v. Maharashtra SRTC 8.)

6. Child of 13 years of age cannot be considered to be in employment, but still the Tribunal has taken into account the annual income of the deceased on notional basis at Rs.2,000/-. The Tribunal has also applied multiplier of 15 as per the II Schedule and after applying the criteria laid down in Sarla Dixit's case the Tribunal has arrived at the figure of Rs. 2,40,000/- towards the loss. I do not find any illegality or infirmity in the said finding of the Tribunal. I am also not inclined to interfere as far as as the funeral expenses are concerned. I feel that the Award of Rs.10,000/- towards the love and affection is quite on the lower side, the same is enhanced from Rs.10,000/- to Rs. 25,000/-. The interest awarded by the Tribunal is also quite on the lower side. Although no fixed rate of interest has been laid down either in the Motor Vehicles Act or in any of the judgments of the Hon'ble Supreme Court or of this Court and the same is awarded keeping in view the facts and circumstances of each case. The banking rate can be considered to be the general guide for the Tribunals but that again vary from time to time as per RBI directions. In any case, I consider the rate of interest of 5.5% is quite on the lower side. The same is raised from 5.5% to 7.5% and the same shall be paid by the respondents from the date of the filing of the petition till the realization of principal amount.

7. With these directions, the impugned order is modified and the Award amount is enhanced accordingly. Counsel for the appellant at this stage also contends that the appellants have not been able to get any benefit of the said amount as major portion of the Award amount falling in the share of the respective appellants at Rs. 80,000/- each has been lying in the fixed deposit. Perusal of the Award shows that the Tribunal has given liberty to the appellants to approach the Tribunal for the withdrawal of the amount in case of any emergent necessity. Accordingly, if there is any emergent requirement of the appellants they can approach the Tribunal explaining and justifying the circumstances for claiming the withdrawal of the said amount.

8. The parties are directed to appear before the Tribunal on 22nd November, 2007 to carry out the said modifications and further directions, if any.