

Smt. Roopa Talwar and ors. Vs. Sh. Paramjit Singh and ors.

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Court : Delhi

Decided On : Dec-03-2007

Reported in : 2008ACJ2694

Judge : Kailash Gambhir, J.

Appeal No. : MAC APP. No. 101/2006

Appellant : Smt. Roopa Talwar and ors.

Respondent : Sh. Paramjit Singh and ors.

Advocate for Def. : Mohan Babu, Adv.

Advocate for Pet/Ap. : Manohar Lal, Adv

Judgement :

Kailash Gambhir, J.

1. By way of this appeal, the appellants seek to challenge the impugned award mainly on three grounds. Firstly, the tribunal has not correctly assessed the income of the deceased, secondly, the tribunal has not considered the grant of future prospects and thirdly, the tribunal has awarded future interest at the rate of 4% from the date of the award till realization.

2. Before adverting to deal with the contentions of the parties, it would be appropriate to give brief facts of the case as under:

On 11.5.2002, the deceased Sh. Harish Talwar was going to Kapoorthala to bring his family in Maruti van bearing registration No. DL 6C E 2251. When he reached near Friends Cattle Feed Factory, a truck bearing registration No. PB 09 4143 came from opposite direction, rashly and negligently and collided with the said Maruti van resulting in causing damages to the van and also injuries to Sh. Harish Talwar who later succumbed to his injuries at Kapurthala Civil Hospital.

3. I have heard learned Counsel for the parties and have perused the records.

4. Counsel for the appellants contends that the deceased was doing the business of manufacturing electrical goods and was earning about Rs. 5,000/- to Rs. 10,000/- per month. Counsel for the appellants contends that PW-1 had duly proved the income of the deceased. Counsel further contends that the tribunal has wrongly assessed the income of the deceased at Rs. 6,000/- per month although income tax return for the relevant year clearly showed the gross income of the deceased at Rs. 98,650/- p.a.

5. On future prospects, the contention of counsel for the appellants is that it was proved on record that the deceased was in the business of manufacturing electrical goods and the tribunal ought to have taken into consideration the growth of the business of the deceased and on the said basis, future prospects should have been taken into consideration.

6. As regards, the lower rate of future interest, the contention of counsel for the appellants is that the tribunal has not given any reasons as to why the tribunal has awarded lower rate of simple interest at the rate of 4% per annum from the date of filing of the award till realization.

7. Per contra, counsel appearing for the respondents, contends that there is no infirmity in the award passed by the tribunal. He contests that the appellants have failed to prove the income of the deceased as even no certified copy of income tax return was filed on record. Counsel further contends that although the photocopy

of income tax return is not admissible in evidence but still the tribunal has taken the said return into consideration for determining the income of the deceased. Counsel further contends that the appellants themselves have stated the income of the deceased between Rs. 6,000/- to Rs. 10,000/- p.m., thereforee, there is no infirmity in the impugned award assessing the income of the deceased at Rs. 6,000/- p.m.

8. On the aspect of future prospects, counsel for the respondents has placed reliance on the judgments of the Apex Court reported in : AIR 2006 SC1255 , Bijoy Kumar Dugar v. Bidya Dhar Dutta and raised the contention that once the appellants have failed to prove on record as to how and in what manner the appellant would have earned future prospects, the tribunal cannot assess the future prospects merely on assumptions.

9. On the aspect of interest, the contention of counsel for the respondents is that 4% interest granted by the tribunal was over and above the rate of interest of 7.5% which was granted from the date of filing of the petition till its realization. Counsel for the respondents otherwise also contends that the impugned award already stands satisfied immediately after passing of the award, thereforee, the plea raised by the appellants in this regard is not available.

10. Perusal of the impugned award shows that the appellants had failed to prove the exact income of the deceased the appellants had merely filed photocopy of the return of the income tax in which the gross income of the deceased was shown at Rs. 98,650/- for the assessment year 2000-2001. The deceased in the present case had died on 11.5.2002, thereforee, the income of the deceased for the said assessment year 2000-2001 could have been taken into consideration. The income of the deceased in the said assessment year as per own case set up by the appellants is Rs. 98,650/- and there is nothing wrong if the net income of the deceased has been taken at Rs. 72,000/- p.a. by the tribunal. Even otherwise, the appellants had claimed the income of the deceased between Rs. 5,000 - 10,000/- p.m. and based on the same, the income of the deceased taken to be at Rs. 6,000/- p.m. cannot be considered to be incorrect. The argument of counsel for the appellants on this account is rejected.

11. As regards, future prospects, the legal position is no more rest integra. For claiming future prospects, the appellants have to plead, prove and establish on record as on what basis the future prospects are being awarded. In this regard the judgment of Apex Court in Bijoy Kumar Dugar's case has held as under:

The mere assertion of the claimants that the deceased would have earned more than Rs. 8000 to Rs. 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

12. Admittedly, no evidence to this effect was led by the appellants, therefore, the plea of claiming compensation towards future prospects cannot be entertained.

13. On the third contention of counsel for the appellants with regard to grant of lower rate of interest at the rate of 4% p.a. from the date of award till realization, I find that the said plea is not available to the appellants at this stage as the respondents have already satisfied the award. Moreover, as per the contention of counsel for the respondents, the said 4% interest was over and above the rate of interest which has been allowed by the Tribunal in favor of the appellants at the rate of 7.5% p.a. from the date of filing of the petition till the date of award and, therefore, it would come to 11.5% rate of interest from the date of award till the date of realization. In case the award passed by the tribunal has not been complied with within a period of 30 days from the date of the award then the appellants shall be entitled to the said increase rate of interest at the rate of 11.5% for the remaining period after giving an allowance of 30 days period.

14. With these directions the appeal is disposed of.