Arvind Singhal and Ors. Vs. Leela Ram and Ors.

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Court : Delhi

Decided On : Nov-13-2014

Judge : Jayant Nath

Appellant : Arvind Singhal and Ors.

Respondent : Leela Ram and Ors.

Judgement :

$~R-10 & R-11 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

13. 11.2014 + MAC.APP. 400/2006 ARVIND SINGHAL AND ORS. ..... Appellant Through Ms.Navneet Goyal, Advocate versus LEELA RAM AND ORS. ..... Respondents Through Mr.S.L.Gupta and Mr.Ram Ashray, Advocates for R-3/Insurance Company + MAC.APP. 404/2006 ARVIND SINGHAL ..... Appellant Through Ms.Navneet Goyal, Advocate versus LEELA RAM AND ORS. ..... Respondents Through Mr.S.L.Gupta and Mr.Ram Ashray, Advocates for R-3/Insurance Company CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) 1. By the present order I shall dispose of MAC.APP.No.400/2006 and 404/2006. Both arise out of a common Award and pertain to the same accident and to members of the same family.

2. I will first take up MAC.APP.400/2006. It pertains to claim petition No.496/2003 pertaining to the death of Smt. Gunjan Singhal.

3. The brief facts which led to the filing of the claim petition are that the appellant No.1 who is the husband of deceased Gunjan Singhal alongwith their, son appellant No.2/Master Tushar Singhal and daughter deceased Baby Diksha was travelling in a Hyundai Accent car on 23.5.2003. On National Highway-8 near Foota Mahal, District Rajsamand, Rajasthan they were hit by a truck said to be driven rashly and negligently by its driver respondent No.1. Due to the accident Gunjan Singhal and baby Diksha died while the appellant suffered injuries.

4. Based on the findings on record the Tribunal granted the following compensation:

(a) Loss of financial dependency 10,08,000 (b) Loss of consortium 25,000/(c) Loss of love and affection 25,000/(d) Funeral expenses 15,000/Total compensation Rs.10,73,000/5. The Tribunal noted that the deceased was 32 years old. She was an Income Tax Assessee. She had done her graduation in Political Science from I.P.College, Delhi. The Tribunal noted that she was working with M/s.Shruti Cement Traders Pvt. Limited getting a salary of Rs.8,500/- per month. Earlier she was stated to be working with M/s. Subhash Malik & Associates. The Tribunal based on Income Tax Returns for the year 2002-03 and 2003-04 noted that her income was Rs.74,000/- per annum. The Tribunal based on this record assessed the monthly income of the deceased @ Rs.6,000/- per month. 1/3rd was deducted towards personal expenses. Future prospects were also added @ 50%. Multiplier of 14 was adopted and loss of dependency was assessed as Rs.10,08,000/-.

6. Learned counsel appearing for the appellant urges relying on the evidence of PW-1 Shri Vinay Kumar, Accountant from M/s.Shruti Cement Traders Pvt. Limited and PW-2 Rajesh, Field officer of M/s.Subhash Mailk and Associates, that the deceased had an income of Rs.1,04,000/- per year. He submits that the income has been shown in the Income Tax Returns for the Assessment Year 2003-04 as 74,000/- and not Rs.1,04,000/- as at that time the Income Tax Department permitted a standard deduction of Rs.30,000/- for those with a salaried income. Adding the said Rs.30,000/- to the income as shown in the IT returns, he submits

that the income of the deceased would be Rs.1,04,000/- and accordingly he submits that the loss of dependency would have to be calculated on the said basis. He further submits that the Tribunal has wrongly taken a multiplier of 14 without keeping in view the age of the deceased and that in view of the judgement of the Supreme Court in Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC121the correct multiplier of 16 is to be used. He lastly submits that compensation under non-pecuniary heads is on the lower side.

7. Learned counsel appearing for the respondent has opposed any enhancement of compensation submitting that the compensation awarded by the Tribunal pertained to an accident that took place in 2003 and is just, fair and reasonable.

8. A perusal of the relevant provisions of standard deduction which was allowed under section 16(i) of the Income Tax Act, 1961 would show that for income between Rs.90,001 to 1,50,000/-, the salaried employees were allowed a standard deduction of Rs.30,000/-.

9. We may see the evidence of PW-1 Shri Vinay Kumar, Accountant of M/s. Shruti Cement Traders Pvt. Limited. He states that the deceased was working and getting a salary of Rs.8,500/-. Ex.PW1/A is the salary certificate issued by M/s.Shruti Cement Traders Pvt. Limited which shows that the deceased was paid a salary of Rs.8,500/- for the period of one month i.e. the period for which she worked and was given one cheque drawn on Union Bank of India, Punjabi Bagh, New Delhi. In his cross-examination he confirms that the deceased worked in their company for only one month.

10. PW-2 Rajesh states that he is Field officer of Subhash Malik and Associates and has confirmed the issuance of salary certificate Ex. PW2/A. The salary certificate of Subhash Malik and Associates dated 30.4.2003 shows that the deceased has been paid salary of Rs.1,04,000/- for the financial year 200203. If we subtract Rs.30,000/- from this figure which is the standard deduction available, the salary would come to Rs.74,000/- i.e. what the income tax return for the Financial Year 2002-03/Assessment Year 2003-04 Ex.PW3/C states. This is also the figure which the Income Tax Return for 2001-02 and Assessment Year 2002-

03 states. Alongwith this return some calculations have been attached which appear to be some kind of balancesheet which also shows that the annual income of deceased in Subhash Malik and Associates was Rs.1,04,000/- and standard deduction was of Rs.30,000/-.

11. Similarly, Aashish Singhal in his evidence by way of affidavit Ex.PW1/X confirmed the above salary of the deceased 12. Based on the evidence above, in my opinion, the Tribunal has wrongly computed the income of the deceased at Rs.6,000/- per month. Keeping into account the evidence of PW1 and PW2 and the appellant (PW-6), the income of the deceased for the purpose of computation for loss of dependency would be Rs.1,04,000/- per annum.

13. The multiplier to be used would be 16 and not 14 as done by the Tribunal.

14. Keeping in view the judgment of the Supreme Court in Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC54which has been followed by this Court in several judgments, the income of the deceased would have to be enhanced by 50% for future prospects. Hence, loss of dependency would now come to Rs.16,64,000/- [(Rs.1,04,000 + 50% - 1/3) x 16].

15. Coming next to the non pecuniary heads the Tribunal has awarded Rs.25,000/- for loss of consortium, Rs.25,000/- for loss of love and affection and nothing for loss of estate. I enhance the award for loss of consortium to Rs.40,000/-. Similarly, for loss of love and affection also I enhance it to Rs.40,000/-. The claimants would also be entitled to Rs.10,000/- for loss of estate.

16. Accordingly, the total compensation would now read as under:

(a) Loss of financial dependency 16,64,000 (b) Loss of consortium 40,000/(c) Loss of love and affection 40,000/(d) Funeral expenses 15,000/(e) Loss of estate 10,000/Total compensation Rs.17,69,000/- 17. The respondent No.3/Insurance company may deposit the enhanced compensation amount as per the above order alongwith interest @6% per annum from the date of filing of the petition till deposit in Court. On receipt of the same Registrar General shall release the compensation to the claimants in the same proportion as directed by the Tribunal. However, the share of appellant No.2 shall be kept in a fixed deposit for a period of five years. He will be entitled to receive quarterly interest from the same. The present appeal stands disposed of. MAC.APP.404/2006 18. This appeal pertains to Claim petition No.497/2003 which was filed by appellant No.1 Arvind Singhal for the injuries sustained by him.

19. In the accident the appellant also suffered injuries. He sustained lacerated wound measuring 6 x 3 x 2 cm on left side of forehead and other injuries. He remained in Coma. He remained admitted in Maharaja Agrasen Hospital, Punjabi Bagh, New Delhi from 25.5.2003 to 17.7.2003. He was treated for head injury apart from fracture humerus (left). He was also treated for neurological problems/disorder.

20. Based on the evidence on record the Tribunal awarded the following compensation:

(i) Reimbursement of medical expenses (ii) Pain & Suffering (iii) Loss of amenities of life/permanent Disability (iv) Loss of earning capacity (v) Loss of income (vi) Conveyance (vii) Special diet (viii) Attendant charges Total 21. 50,000/1,50,000/1,50,000/8,00,000/72,000/25,000/25,000/25,000/12,97,000/- Learned counsel appearing for the appellant seeks enhancement of the compensation. He submits that the Tribunal has assessed the functional disability of the appellant at 50%. Thereafter the Tribunal assessed the income of the appellant based on the income tax returns as Rs.12,000/- per month. The Tribunal awarded Rs.3,000/- for future increase and assessed the loss of income due to physical disability at Rs.14,40,000/-. Having assessed the disability at the said figure the tribunal has held that the appellant is doing a business which involves communication skills dealing with client/customer etc. Hence, the compensation under this head was reduced to Rs.8 lacs by the Tribunal.

22. Learned counsel for the appellant submits that this was a reduction without any basis and contrary to the legal position. He secondly submits that having assessed the income of the appellant at 12,000/- per month the addition of 3,000/- for increase in future income was contrary to the judgments of this Court. The future prospects should have been at least 50%. He lastly submits that the

appellant has been given reimbursement of medical bills of only Rs.50,000/-. He submits that he had incurred expenses of Rs.3,68,725/-. These bills he submits were submitted pursuant to the Mediclaim Policy to the insurance company which were paid directly to the hospital to the tune of Rs.1,57,000/-. The balance he submits was borne by the appellant. He submits that the said balance sum has not been granted by the Tribunal and claims the said sum of Rs.2,11,225/-.

23. As far as the first two submissions of the appellant are concerned there is merit in the same. The Tribunal assessed the income at Rs.12,000/- per month and thereafter computed loss of income due to physical disability at Rs.14,40,000/- assessing the functional disability at 50%. Having assessed the loss of income at Rs.14,40,000/- to reduce this to Rs.8,00,000/- has no justification. Having assessed the functional disability at 50% it was not appropriate for the Tribunal to reduce the loss of income in an ad hoc manner. There is no proper justification for the same.

24. Further in my opinion, keeping in view the judgment of the Supreme Court in the case of Rajesh & Ors. vs. Rajbir Singh & Ors.(supra) and V. Mekala vs. M. Malathi & Anr. 2014 ACJ1441 the appellant would be entitled to enhancement of 50% to the assessed income of Rs.12,000/- per month on account of future rise in income/future prospects.

25. Hence, loss of income due to physical disability would now come to Rs.17,28,000/- [(12,000 + 50%) x 12 x 16 x 50/100].

26. Coming to the reimbursement of medical bills totalling Rs.2,11,225/-, the Tribunal has noted that the hospital bill was for Rs.3,68,725/-. Apart from that expenses were incurred for purchase of medicines, physiotherapy etc.

27. The Tribunal noted that in the cross-examination of appellant No.1/Mr.Arvind Singhal it was revealed that Rs.1,57,000/- was paid by the Insurance Company and the balance was borne by him. The Tribunal further noted that in the written submission filed it was urged that there were unpaid bills of Rs.2,11,225/-. The Tribunal however concluded that the appellant did not make a clean breast of everything and no document has been filed on record regarding the exact amount

which was reimbursed by the medi-claim in regard to the hospitalisation and expenses and therefore did not accept the plea.

28. A perusal of the affidavit by way of evidence of Sh.Arvind Singhal PW- 6 shows that in his affidavit he has said that he has made some medical expenses which he has claimed payment under mediclaim policy for himself and his son Tushar. He further states that the original bills have been furnished to claim mediclaim facility and the same are not claimed or put here.

29. The record however reveals that one bill of Maharaja Agarsen Hospital has been placed on record which is dated 17.07.2003 in the name of Arvind Singhal which is for a sum of Rs.4,15,550/- less discount totalling Rs.3,68,725/-. This bill has not been proved in affidavit.

30. In his cross-examination he said that Rs.1,57,000/- was paid by Insurance Company. He further states that he cannot show any receipt in proof of having made payment towards bill of the hospital.

31. The evidence placed on record by the claimant regarding the payment made to the hospital for the hospital bills is very sketchy and hence, I am not persuaded to disagree with the findings recorded by the Tribunal.

32. The Tribunal, however, noted that certain original bills and cash memos are filed on record. Keeping this into account and the physiotherapy charges the Tribunal awarded Rs.50,000/- for reimbursement of medical expenses. Hence, in my opinion the finding of the Tribunal regarding the compensation granted under the medical expenses is in order.

33. The total compensation now reads as under:

(i) Reimbursement of medical expenses 50,000/(ii) Pain & Suffering 1,50,000/(iii) Loss of amenities of life/permanent 1,50,000/Disability (iv) Loss of earning capacity 17,28,000/(v) Loss of income 72,000/(vi)Conveyance 25,000/(vii) Special diet 25,000/(viii) Attendant charges 25,000/Total Rs.22,25,000/- 34. The respondent No.3/Insurance company may deposit the enhanced compensation amount as per the above order alongwith interest @6% per annum from the date of filing of the petition till deposit in Court. On receipt of the same Registrar General shall release the compensation to the claimant in the same proportion and manner as directed by the Tribunal. The present appeal stands disposed of. JAYANT NATH, J NOVEMBER13 2014 n