

Dalvinder Kaur @ Devinder Vs. United India Insurance Co. Ltd.

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Court : Delhi

Decided On : Mar-25-2010

Judge : J.R. Midha, J.

Appeal No. : F.A.O. 524/2003

Appellant : Dalvinder Kaur @ Devinder

Respondent : United India Insurance Co. Ltd.

Advocate for Def. : Vishnu Mehra and; R.L. Kadamb, Advs.

Advocate for Pet/Ap. : Varun Kumar and; Navneet Goyal, Advs.

Judgement :

J.R. Midha, J.

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 12,82,200/- has been awarded to them. The appellants seek enhancement of the award amount.

2. The accident dated 7th June, 1999 resulted in the death of S. Inderjeet Singh. The deceased was survived by his widow, two minor sons and mother who filed the claim petition before the learned Tribunal.

3. The deceased was aged 38 years at the time of the accident and was working as a building contractor. The deceased was an Income-Tax assessee and as per the last Income-Tax Return, the income of the deceased was Rs. 1,54,800/-. However, the Claims Tribunal disregarded the said Income-Tax return on the ground that it was filed after the death of the deceased. The deceased expired on 7th June, 1999 whereas the Income-Tax Return, Ex.PW-2/7 was filed on 30th September, 1999. The Claims Tribunal took the income of the deceased relating to the previous year, according to which the income of the deceased was Rs. 1,28,280/-. 1/3 was deducted towards the personal expenses of the deceased and the multiplier of 15 was applied to compute the loss of dependency at Rs. 12,82,800/-.

4. The learned Counsel for the appellants has urged the following grounds at the time of hearing of this appeal:

(i) The income of the deceased be taken at Rs. 1,54,800/-.

(ii) The future prospects of the deceased be taken into consideration.

(iii) The deduction towards the personal expenses of the deceased be reduced from 1/3 to 1/4.

(iii) The compensation be awarded for loss of love and affection, loss of estate and loss of consortium.

5. The Income-Tax Return, PW-2/7 filed on 30th September, 1999 has been perused. The said Income-Tax Return relates to the period 1st April, 1998 to 31st March, 1999 and the same was filed on 30th September, 1999 within the prescribed period of limitation for filing the Income-Tax Return. There is no rebuttal evidence by the respondent to show that the contents of the said Income-Tax Return were not correct. The Claims Tribunal was in error in not taking the last Income-Tax Return of the deceased into account. The filing of Income-Tax Return after the death of the deceased is no ground for disregarding the same. The income of the deceased is taken to be Rs. 1,54,800/- per annum as per the Ex.PW-2/7. The deceased paid Income-Tax of Rs. 20,440/- and after deducting

the same from Rs. 1,54,800/-, the income of the deceased is taken to be Rs. 1,34,360/- per annum.

6. The learned Counsel for the appellants submits that future prospects be taken into consideration. According to the judgment of the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation : 2009 (6) Scale 129, the future prospects are not permitted to be added in respect of self-employed persons. Learned Counsel for the appellant submits that after the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (supra), the Hon'ble Supreme Court in the case of R.K. Malik v. Kiran Pal 2009 (8) Scale 451, has permitted the future prospects to be taken into consideration in respect of death of a minor child. The learned Counsel for the appellant refers to and relies upon the recent judgment dated 24th November, 2009 of the Hon'ble Supreme Court in the case of Baby Radhika Gupta v. Oriental Insurance Co. Ltd. Civil Appeal No. 7736/2009 in which the Hon'ble Supreme Court awarded Rs. 2 lakh towards future prospects in respect of a self-employed person.

7. Following the judgment of the Hon'ble Supreme Court in the case of R.K. Malik (supra) and Baby Radhika Gupta (supra), 50% is added towards the future prospects of the deceased and income of the deceased for computation of compensation is taken to be Rs. 2,01,540 (Rs. 1,34,360/- + Rs. 67180/-).

8. The deceased has left behind four legal representatives and, therefore, the appropriate deduction towards personal expenses of the deceased according to the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (supra) is 1/4th. Following the aforesaid judgment of the Hon'ble Supreme Court, the personal expenses of the deceased are reduced from 1/3rd to 1/4th.

9. The leaned Tribunal has not awarded non-pecuniary compensation to the appellants. Rs. 10,000/- is awarded towards the loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses.

10. Taking income of the deceased to be Rs. 2,01,540/-, deducting 1/4 towards the personal expenses of the deceased, applying the multiplier of 15, adding Rs.

10,000/- towards loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses, the total compensation computed to be Rs. 23,02,325/- [Rs. 2,01,540 x $\frac{3}{4}$ x 15) + Rs. 10,000 + Rs. 10,000 + Rs. 10,000 + Rs. 5,000].

11. The appeal is allowed and the award amount is enhanced from Rs. 12,82,200/- to Rs. 23,02,325/-. The learned Tribunal has awarded interest @ 9% per annum which is not disturbed on the original award amount of Rs. 12,82,800/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

12. The enhanced award amount along with interest be deposited by respondent No. 1 with UCO Bank, Delhi High Court Branch A/c Devinder Kaur by means of a cheque to be handed over to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

13. Upon the aforesaid deposit being made, the UCO Bank is directed to release 10% of the said amount to appellants in equal proportion. The remaining amount be kept in fixed deposit in the following manner:

(i) Fixed deposit in respect of 10% of the amount in the name of appellant No. 4 for a period of one year.

(ii) Fixed deposit in respect of 10% of the amount in the name of appellant No. 1 for a period of two years.

(iii) Fixed deposit in respect of 10% of the amount in the name of appellant No. 2 for a period of three years.

(iv) Fixed deposit in respect of 10% of the amount in the name of appellant No. 3 for a period of four years.

(v) Fixed deposit in respect of 10% of the amount in the name of appellant No. 4 for a period of five years.

(vi) Fixed deposit in respect of 10% of the amount in the name of appellant No. 1 for a period of six years.

- (vii) Fixed deposit in respect of 10% of the amount in the name of appellant No. 2 for a period of seven years.
- (viii) Fixed deposit in respect of 10% of the amount in the name of appellant No. 3 for a period of eight years.
- (ix) Fixed deposit in respect of 10% of the amount in the name of appellant No. 1 for a period of eight years.
14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No. 1.
15. Withdrawal from the aforesaid account shall be permitted to appellant No. 1 after due verification and the Bank shall issue photo Identity Card to appellant No. 1 to facilitate identity.
16. No cheque book be issued to respondent No. 1 without the permission of this Court.
17. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to appellant No. 1 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDRs.
18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
19. Half yearly statement of account be filed by the Bank in this Court.
20. On the request of appellant No. 1, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellant No. 4.
21. Appellants Nos.1 to 4 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.
22. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

23. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

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