

Umakant Vs. D.T.C. and anr.

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Court : Delhi

Decided On : Apr-23-2010

Judge : J.R. Midha, J.

Acts : Code of Civil Procedure (CPC) - Order 21, Rule 1

Appeal No. : F.A.O. No. 15/2001

Appellant : Umakant

Respondent : D.T.C. and anr.

Advocate for Def. : Abhishek Kumar, Adv. for; G.S. Chaturvedi, Adv.

Advocate for Pet/Ap. : Sanjiv Sharma, Adv.

Judgement :

J.R. Midha, J.

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 4,25,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 10th July, 1989 resulted in the death of Dr. S.B. Chikkodimath. The deceased was survived by his widow, one minor son and mother who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 43 years and 6 months at the time of the accident. The deceased was M.Sc. and Ph.D in Mathematics. The deceased worked as Director of Research Institute of Mathematical Sciences and Technology, Hubly, Karnataka from 1976 to 1985 at a salary of Rs. 3,200/- per month. Thereafter, the deceased worked as Senior Assistant Professor in Mathematics in Ethiopian Air Force Academy at a salary of 1635 Birr (equivalent of approximately Rs. 10,000/- per month). The contract of the deceased with the Ethiopian Government is Ex.P-5 according to which the deceased was entitled to free housing, water, electricity and petrol. The deceased worked with the Ethiopian Government for about two years and thereafter returned back to India in 1987 and he started guiding Ph.D. students earning Rs. 4,500/- to Rs. 5,000/- per month. The deceased wanted to work with the NCERT or Delhi University as a Reader/Professor in Maths and was in the process of applying for the said position. As an interim measure, the deceased joined Apeejay School, Faridabad as a stop gap arrangement at a salary of Rs. 2,389/- per month in July, 1989. The deceased met with an accident 7 days after joining Apeejay School.

4. The Claims Tribunal took the income of the deceased as Rs. 5,000/- per month, deducted 1/3rd towards his personal expenses and applied the multiplier of 10 to compute the loss of dependency at Rs. 4,08,000/-. Rs. 17,000/- has been awarded towards loss of love and affection and loss of consortium. The total compensation awarded is Rs. 4,25,000/-.

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

(i) The income of the deceased be taken as Rs. 6,000/- per month.

(ii) 50% be added towards the future prospects.

(iii) The multiplier be enhanced from 10 to 14.

(iv) The compensation towards loss of love and affection and loss of consortium be enhanced.

(v) The compensation be awarded towards funeral expenses and loss of estate.

6. The Claims Tribunal has taken the income of the deceased on the basis of salary drawn by the deceased from Apeejay School, Faridabad at the time of the accident. Considering the qualifications of the deceased, namely, M.Sc. and Ph.D. in Mathematics and the positions held by him, namely, Director of Research Institute of Mathematical Sciences and Technology, Hubly, and Senior Assistant Professor with Ethiopian Government, the salary drawn by him from Research Institute of Mathematical Sciences and Technology, the Claims Tribunal ought to have taken the average of the salaries drawn by him to ascertain the earning capacity of the appellant. Admittedly, the deceased was well qualified for being employed as a Reader or Professor with a University and would have gainfully employed at a better salary than what he was drawing in Apeejay School, Faridabad at the time of his death as a stop gap arrangement. Taking the average of the salary of Rs. 3,200/- drawn by the deceased as Director of Research Institute of Mathematical Sciences, Rs. 10,000/- drawn by the deceased as Assistant Professor from the Ethiopian Government and Rs. 2,389/- drawn by the deceased from Apeejay School, Faridabad, the average income of the deceased is computed to be Rs. 5,196/- per month $[(Rs.3,200 + Rs. 10,000 + Rs. 2,389)/3]$.

7. The learned Counsel for the appellant submits that 50% be added towards the future prospects. 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 of 30% are awarded in respect of the deceased between the age of 40-50 years where the deceased was having permanent employment. The employment of the deceased at the time of the accident was not permanent. The learned Counsel for the appellant submits that the Hon'ble Supreme Court has permitted the future prospects to be taken into consideration in exceptional cases and the present case clearly falls under the exception considering the qualifications and the posts held by the deceased. The learned Counsel for the appellant also refers to and relies upon the judgment of the Hon'ble Supreme Court in the case of R.K. Malik v. Kiran Pal : 2009 (8) Scale 451, where the Hon'ble Supreme Court has granted future prospects in the case of minor school going children. The learned Counsel for the appellant submits that the deceased was in a better position than the minor school going children. Following the aforesaid judgments of the Hon'ble Supreme Court, the 30% is added towards the

future prospects of the deceased and the income of the deceased for computation of compensation is taken to be Rs. 6,754.8 (Rs.5196 + 30%).

8. The Claims Tribunal has applied the multiplier of 10. However, the appropriate multiplier at the age of 43 years according to the judgment of the Hon'ble Supreme Court in the case of Saral Verma (Supra) is 14. Following the judgment of the Hon'ble Supreme Court, the multiplier is enhanced from 10 to 14. The Claims Tribunal has awarded Rs. 17,000/- towards loss of love and affection and loss of consortium which is just, fair and reasonable and does not call for any interference. However, Rs. 10,000/- is awarded towards loss of estate and Rs. 5,000/- towards funeral expenses.

9. The appellant is entitled to total compensation of Rs. 7,88,538/- (Rs.7,56,538/- towards loss of dependency, Rs. 17,000/- towards loss of love and affection and loss of consortium, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses.

10. The appeal is allowed and the award amount is enhanced from Rs. 4,25,000/- to Rs. 7,88,538/-. The Claims Tribunal has awarded interest @ 12% per annum which is not disturbed on the original award amount of Rs. 4,25,000/-. 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 date of deposit under Order XXI Rule 1 of the Code of Civil Procedure

11. The enhanced award amount along with interest be deposited by respondent No. 1 with UCO Bank A/c Umakant, Delhi High Court Branch within 30 days.

12. Upon the aforesaid deposit being made, the UCO Bank is directed to transfer 10% of the same to the Saving Bank Account of the appellant. The remaining amount be kept in fixed deposit in the name of the appellant in the following manner:

(i) Fixed deposit in respect of 10% of the award amount for a period of six months.

(ii) Fixed deposit in respect of 10% of the award amount for a period of one year.

(iii) Fixed deposit in respect of 10% of the award amount for a period of one and a half years.

(iv) Fixed deposit in respect of 10% of the award amount for a period of two years.

(v) Fixed deposit in respect of 10% of the award amount for a period of two and a half years.

(vi) Fixed deposit in respect of 10% of the award amount for a period of three years.

(vii) Fixed deposit in respect of 10% of the award amount for a period of three and a half years.

(viii) Fixed deposit in respect of 10% of the award amount for a period of four years.

(ix) Fixed deposit in respect of 10% of the award amount for a period of four and a half years.

13. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

14. Withdrawal from the aforesaid account shall be permitted to the appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.

15. No cheque book be issued to the appellant without the permission of this Court.

16. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellant and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

17. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

18. Half yearly statement of account be filed by the Bank in this Court.

19. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch according to the convenience of the appellant.

20. The appellant 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.

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

22. 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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