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Court : Delhi

Decided On : May-14-2012

Judge : G.P. Mittal

Appeal No. : MAC. APP. No. 1123 OF 2011

Appellant : Ashok Kumar and Another

Respondent : Matbar Singh and Others

Judgement :

G. P. MITTAL, J.

(ORAL)

1. The Appellants who are the parents of the deceased Ashish Kumar a minor aged 17 years and a student of 10th standard seek enhancement of compensation of Rs.2,44,000/- awarded for his death in an accident which occurred on 01.09.2005.

2. No Appeal has been preferred by the Insurance Company or by the driver and owner of the offending vehicle. I am, therefore, not to go into the finding on negligence which has become final between the parties.

3. Grant of compensation to the parents of a deceased minor studying in a school is covered by the judgment of this Court in National Insurance Company Limited v.

Farzana and Ors., 2009 ACJ 2763, where, after considering various judgments of the Supreme Court, a compensation of Rs.3,75,000/- was awarded. I extract paras 4 to 8 of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. The case of Sobhagya Devi and Ors. Vs. Sukhvir Singh and Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours and Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

4. Considering the latest judgment of the Supreme Court in R.K. Malik v. Kiran Pal, 2009 (8) Scale 451, the Appellants are entitled to a compensation of Rs. 3,75,000/- i.e. Rs.2,25,000/- on account of loss of dependency, Rs.75,000/- towards future prospects and Rs. 75,000/- towards non pecuniary damages.

5. The overall compensation is thus enhanced from Rs.2,44,000/- to Rs. 3,75,000/-. The enhanced compensation of Rs.1,31,000/- shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of the deposit and shall be equally shared by the Appellants.

6. The Respondent No.3 National Insurance Company Ltd. is directed to deposit the enhanced amount of compensation with the UCO Bank, Delhi High Court Branch in the name of the Appellants (Claimants) within 30 days from the date of order. 50% of the amount to be kept in Fixed Deposit for a period of two years. Rest of the amount shall be released immediately on deposit.

7. The Respondent No.3 National Insurance Company Limited shall have the right to recover the enhanced compensation paid from the First and the Second Respondents as ordered by the Claims Tribunal.

8. The Appeal is allowed in above terms.

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