Sunaina Devi and anr. Vs. Ram Phal and ors.

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Court : Delhi

Decided On : Nov-22-2012

Judge : G.P. Mittal

Appellant : Sunaina Devi and anr.

Respondent : Ram Phal and ors.

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

22. d November, 2012 + MAC.APP. 530/2009 SUNAINA DEVI & ANR. Through: ..... Appellants Mr.O.P.Mannie, Advocate versus RAM PHAL & ORS. Through: ..... Respondents Mr.S.L.Gupta & Mr.Ram Ashray, Advocates for R-3 Insurance Company CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The Appeal is for enhancement of compensation of ` 3,56,800/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of their son Satya Kishore Kumar, a bachelor, who suffered injuries in a motor vehicle accident which occurred on 02.07.2007, resulting into his death on account of the injuries on 29.08.2007.

2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.

3. During inquiry before the Claims Tribunal, it was claimed that the deceased Satya Kishore Kumar was in a private service and was earning `8,000/- per month. It was stated that a sum of ` 86,000/- was billed by Sant Parmanand Hospital for his treatment out of which a sum of ` 15,000/- was paid to the Hospital, rest of the amount was waived. Apart from this, he spent an amount of ` 23,948/- on purchase of medicines.

4. In the absence of any cogent evidence with regard to the deceaseds income the Claims Tribunal took the minimum wages of a Matriculate, that is, ` 3950/- as fixed by the Govt. of NCT of Delhi under the Minimum Wages Act at that time; deducted 50% towards personal and living expenses as the deceased was a bachelor; and applied the multiplier of 14 as per the age of the deceaseds mother.

5. The Claims Tribunal further awarded a sum of ` 15,000/- towards the treatment of the deceased and a sum of ` 5,000/- each towards loss to estate and funeral expenses.

6. The following contentions are raised on behalf of the Appellants:(i) Apart from a sum of ` 15,000/-, there was an expenditure of ` 23,948/- towards purchase of medicines which was proved by bills Exs. PW3/12 to PW3/35. (ii) In the absence of any evidence with regard to the future prospects, the Appellants were entitled to an addition of 30% in the minimum wages on account of inflation on the basis of the report of the Supreme Court in Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559 (iii) The compensation awarded towards non-pecuniary damages is on the lower side.

7. The Appeal must succeed on all the grounds.

8. I have before me the Trial Court record. Original bills Exs. PW3/12 to PW3/35 had been proved which show that the medicines were purchased for the treatment of the deceased during the period of his hospitalisation from 02.07.2007 to 29.08.2007. These bills total to ` 23,948/- as per the calculation sheet filed at the time of the hearing by the learned counsel for the Appellant. The Appellants are, therefore, entitled to a compensation of ` 24,000/- towards purchase of medicines. I award the same accordingly.

9. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176.Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179.Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors, (2006) 3 SCC 242.Sarla Verma & Ors. v. Delhi Transport Corporation & Anr, (2009) 6 SCC 12.and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 55 and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:14..In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the

challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Vermas judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

10. Applying Santosh Devi the Appellants are entitled to an addition of 30% towards inflation. The loss of dependency thus comes to ` 4,31,340/(3950+30% x 1/2 x 12 x 14).

11. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting nonpecuniary damages. The Supreme Court in Sunil Sharma v. Bachitar Singh (2011) 11 SCC 42.and in Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 62.granted ` 25,000/- (in total to all the claimants) under the head of loss of love and affection.

12. As no compensation was awarded towards loss of love and affection. I would make a provision of `25,000/- towards loss of love and affection.

13. The compensation awarded towards loss to estate and funeral expenses is enhanced from ` 5,000/- each to ` 10,000/- each.

14. The compensation awarded is re-computed hereunder:Sl.No. Compensation under various heads Awarded by the Claims Tribunal Awarded by this Court ` 3,31,800/- ` 4,31,340/- `15,000/- `15,000/- 1. Loss of dependency 2. Medical

Expenses 3. Purchase of medicines .. ` 24,000/- 4. Loss of love and affection .. ` 25,000/- 5. Loss to estate ` 5,000/- ` 10,000/- 6. Loss of funeral expenses ` 5,000/- ` 10,000/- ` 3,56,800/- ` 5,15,340/- Total 15. The overall compensation comes to ` 5,15,340/- as against `3,56,800/awarded by the Claims Tribunal.

16. The compensation thus stands enhanced by ` 1,58,540/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

17. The enhanced compensation shall be equally shared between the Appellants. 50% of the enhanced compensation shall be held in fixed deposit in any Nationalized Bank for a period of two years. Rest shall be released on deposit.

18. Respondent National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

19. The Appeal is allowed in above terms.

20. Pending Applications stand disposed of. (G.P. MITTAL) JUDGE NOVEMBER 22 2012 v