Kanta JaIn and ors. Vs. Sunil Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/956922

Court : Delhi

Decided On : Nov-27-2012

Judge : G.P. Mittal

Appellant : Kanta JaIn and ors.

Respondent : Sunil Kumar and ors.

Advocate for Def. : Ms. Shantha Devi Raman

Advocate for Pet/Ap. : Mr. Navneet Goyal, Ms. Suman N. Rawat

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

22. d November, 2012 Pronounced on:27th November, 2012 + MAC.APP. 643/2011 KANTA JAIN & ORS. Through: ..... Appellants Mr. Navneet Goyal, Adv. with Ms. Suman N. Rawat, Adv. versus SUNIL KUMAR & ORS. Through: ..... Respondents Ms. Shantha Devi Raman, Adv. for R-3. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of `19,18,520/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Kesho Ram Jain who died in a motor vehicle accident which occurred on 16.02.2010.

2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence reached by the Claims Tribunal has attained finality.

3. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a General Manager with Stanley Consultant India Pvt. Ltd. and was getting a salary of `75,284/- per month. The Claims Tribunal accepted the deceaseds income as claimed, deducted a sum of ` 1,50,000/- towards liability on income tax, deducted 50% towards personal and living expenses and applied the multiplier of 5 to compute the loss of dependency.

4. The Claims Tribunal further awarded a sum of `10,000/- each towards loss of love and affection, loss to estate and loss of consortium and Rs. 5,000/- towards funeral expenses to compute the overall compensation of `19,18,520/-.

5. The following contentions are raised on behalf of the Appellants:(i) Deduction of 50% towards personal and living expenses was on the higher side. (ii) Deceased was a highly qualified person some addition towards future prospects should have been made. (iii) Deduction of `1,50,000/- towards income tax was more than the liability towards income tax. (iv) The compensation awarded towards non pecuniary damages is on the lower side. (v) 6. The award of interest @ 7.5% per annum was on the lower side. On the other hand, learned counsel for the Respondent Insurance Company urges that the compensation awarded is just and reasonable.

7. While dealing with the quantum of compensation, the Claims Tribunal held as under:14..The salary slip shows that the deceased was getting gross salary of `75,284/-. Therefore the annual salary of the deceased comes to `9,03,408/- (`75,284/- x 12). After deduction of `1,50,000/- (approx.) as income tax, net annual salary of deceased comes to `7,53,408/-. As the deceased was 68 years of age at the time of his death therefore following the judgment of Sarla Verma and Ors. v. DTC & Ors. no amount can be added towards future prospects.

15. In Sarla Verma and Ors. v. DTC & Anr. Honble Supreme Court has held that in case of married person the deduction will be 1/3rd when there are 2-3 dependents. Further in the case titled, S. Jasbir Singh and Anr. vs. National Insurance Co. Ltd.

MAC Appeal 92/2010, Honble Delhi High Court has held that in case there is only one dependent 50% of the amount is liable to be deducted towards personal and living expenses. It is evident from the record that petitioner no.2 to 4 were not dependent on the deceased and only petitioner no.1 was the dependent.

16. In view of the above position of law, i.e. `3,76,704/- is deducted as the personal and living expenses of the deceased (as there is only one dependent i.e. wife of the deceased). After such deduction the contribution to the family (dependants) is determined as `3,76,704/- per annum. The multiplier applicable would be 5 considering the age of the deceased (68 years). Therefore, the total loss on dependency would be `3,76,704/- x 5 = `18,83,520/-.

8. It is true that deceased was a highly qualified Civil Engineer from Roorkee and that is why he was working as a General Manager with M/s. Stanley Consultants India Pvt. Ltd. even after ten years of his retirement as Chief Engineer from Central Electronics Limited in the year 1999.

9. The normal rule as laid down by the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 12.is that when there is only one dependant, the deduction towards personal and living expenses would be 50%. There may be cases where a person might be earning very high income and the actual expenses on the deceased himself might be much lower. Thus, if variation has to be made to the thumb rule as laid down in Sarla Verma the Claimants must produce evidence with regard to the same.

10. Admittedly, the deceased retired as Chief Construction Engineer from Central Electronics Limited. He was working as a General Manager with M/s. Stanley Consultants India Pvt. Ltd. Thus, he could be presumed to be used to very high standard of living. In the absence of any specific evidence as to the expenditure incurred by the deceased on him the rule laid down in Sarla Verma cannot be deviated. The Claims Tribunal was, therefore, justified in making deduction of 50% towards personal and living expenses.

11. Similarly, the deceased was aged 68 years. We do not know whether the deceased was to work for another five years or not. At the age of 68 years addition

towards future prospects cannot be made in the income of the deceased. The Claims Tribunal relied on Sarla Verma and rightly declined any addition on account of future prospects which cannot be faulted.

12. I have gone through the provision relating to deduction towards income tax in the Assessment year 2011-12. In case of senior citizen liability of tax on an income of `9,03,408/- was `1,16,000/- only as against `1,50,000/- taken by the Claims Tribunal. Thus, on making deduction of `1,16,000/- towards income tax, the loss of dependency comes to `19,68,520/- (75,284/- x 12 `1,16,000/- x 1/2 x

5) as against a sum of `18,83,520/- awarded by the Claims Tribunal.

13. The compensation of `10,000/- awarded towards loss of love and affection is also on the lower side. The Supreme court in Sunil Sharma v. Bachitar Singh (2011) 11 SCC 42.and 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. Following the same, I also make a provision of `25,000/- under this head.

14. The compensation of `5,000/- awarded towards funeral expenses is also raised to `10,000/-.

15. The compensation awarded is recomputed as under:Sl. Compensation under various heads Awarded by this Court No.

1.

2. Loss of Love and Affection ` 25,000/- 3. Funeral Expenses ` 10,000/- 4. Loss to Estate (as awarded by the Claims Tribunal) ` 10,000/- 5. Loss of Consortium (as awarded by the Claims Tribunal) ` 10,000/- Total 16. Loss of Dependency ` 20,23,520/- `19,68,520/- The compensation is thus enhanced from `19,18,520/- to `20,23,520/-. RATE OF INTEREST 17 It may be noted that the Claims Tribunal awarded interest @ 7.5% per annum. This accident took place in the year 2010. Rate of interest on long-term deposit in the year 2010 were in the vicinity of 9% per annum. In Smt. Dhaneshwari & Anr. v. Tejeshwar Singh & Ors., (MAC.APP. 997/2011) decided on 19.03.2012, this Court held as under:

70. Rate of interest were in double digits in 1980s and 1990s. The interest rate started falling at the beginning of this century. They started rising and firming up since 2007. Since the rate of interest on long term deposit is now about 9% per annum, it is unreasonable to award interest @ 7.5% per annum to the victims of the motor accident.

18. In the circumstances, the Appellants ought to have been awarded interest @ 9% per annum instead of 7.5% per annum awarded by the Claims Tribunal.

19. The enhanced compensation of `1,05,000/- along with interest as awarded shall be deposited by the Respondent No.3 IFFCO Tokio General Insurance Company Limited with the Claims Tribunal within six weeks.

20. The enhanced compensation shall enure for the benefit of the First Appellant.

21. Seventy Five percent of the enhanced compensation shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.

22. The Appeal is allowed in above terms.

23. Pending Applications stands disposed of. (G.P. MITTAL) JUDGE NOVEMBER 27 2012 vk