* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 01 April, 2024

Judgment pronounced on : 07 May 2024

\+ MAC.APP. 27/2016

THE NEW INDIA ASSURACE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SUJATHA AND ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The appellant/insurance company has preferred this appeal in terms of Section 173 of Motor Vehicles Act, 1988[1] assailing the impugned judgment-cum-award dated 01.10.2015 passed by learned Presiding Officer, Motor Accidents Claims Tribunal, Dwarka, New Delhi[2] challenging the quantum of compensation awarded to the extent that the learned Tribunal has wrongly assessed compensation towards loss of financial dependency by not accounting or deducting the amount of certain allowances which were personal to the deceased.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the deceased Suresh Mekala, aged about 32 years, suffered fatal injuries in a motor accident involving the offending Maruti Omni car bearing registration No. HR-46B-7867

[1] M.V.Act
[2] Tribunal

that occurred on 06.04.2012 which offending car was being driven by respondent No.3 and evidently insured with the appellant/insurance company.

3. The findings by the learned Tribunal with regard to culpability of respondent No.3 in causing the accident and resulting in the death of the deceased is not in challenge. Learned Tribunal rightly found that deceased was working as L/NK at Director General Information System, PMO AD C & Rs and ASC (Army), General Staff Branch, Integrated Headquarter of MOD (Army) DGIS Enclave, New Delhi and drawing a salary of Rs.30,279/- p.m. The said amount was reckoned so as to arrive at annual income of the deceased and 1/3rd was deducted towards personal use and living expenses and a multiplier of '16' was applied. Further 50% provision was made towards increase in annual income with regard to future prospects and accordingly loss of dependency was arrived at Rs. 58,13,568/-. Further, Rs.1 lac was awarded towards loss of estate; Rs.25,000/- towards funeral expenses and Rs.1 lac towards loss of consortium besides Rs.1 lac to the child of the deceased on account of loss of love and affection of his father. Hence, the claimants being the wife/widow of the deceased and the minor son have been awarded total compensation of Rs.61,38,568/- with interest @ 10% per annum from the date of filing of the DAR[3] till realization.

[3] Detailed Accident Report

4. Having heard the learned counsels for rival parties and on perusal of the record besides the trial court record, I find that the learned Tribunal has committed certain irregularities in the assessment of compensation, which require to be corrected.

5. First things first, as far as the loss of financial dependency is concerned, the last pay certificate of the deceased as on 06.04.2012 was placed on the record and it clearly suggests that he was entitled to a transport allowance of Rs.1600/- per month besides ration money of Rs.1,753/-. These two allowances which were personal to the deceased need to be deducted and the monthly income would be arrived at Rs.26,926/- (Rs.30,279 – Rs.1600 – Rs.1753). Annual income shall thus arrive at Rs.3,23,112/- to which 50% has to be added towards future prospects after which the total annual income would be Rs.4,84,668/-. Further, upon deducting one-third towards personal use and expenses, the amount of financial dependency would come to Rs.3,23,112/- to which multiplier of '16' shall be applicable, and therefore, the loss of financial dependency would come to Rs.51,69,792/-. In terms of the decision by the Supreme Court in the case of **National Insurance Company v. Pranay Sethi**[4] each of the legal heirs of the deceased is to be awarded Rs.40,000/- towards loss of consortium along with Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Accordingly, the amount of compensation would come to Rs.52,79,792/-.

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[4] (2017) 16 SCC 680

6. Lastly the learned Tribunal has awarded interest at 10% per annum. This Court has taken a consistent view that unless exceptional circumstances are shown, the rate of interest that is to be awarded to the claimants should be 7.5% from the date of filing of the petition i.e. from 01.11.2012 till realization.

7. In view of the foregoing discussion the present appeal is allowed. The amount of compensation is reduced to Rs.52,79,792/- and the claimants shall be entitled to receive the same with interest @ 7.5% from the date of filing of the petition till realization. A perusal of the record shows that this Court *vide* order dated 15.01.2016 has already released 60% of the awarded amount to the claimants. The balance amount with accrued interest from the date of filing of the petition i.e. from 01.11.2012 till date shall be paid. Further in case of any shortfall and the same be deposited with the learned Tribunal within four weeks from today, failing which the appellant/insurance company shall be liable to pay penal interest @ 12% on the balance amount from the date of this judgment till realization. The amount so deposited shall be released to the claimants in terms of the directions passed by the learned Tribunal.

8. The appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

MAY 07, 2024
VLD