
(2009) 01 PAT CK 0014
In the Patna High Court
Case No : M.A. No. 349 of 2006

Asha Devi and Others

APPELLANT

Vs

Renu Shukla and Another

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Minimum Wages Act, 1948 — Section 3, 5
Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) 3 PLJR 23

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Mukesh Pd. Singh, for the Appellant; Randhir Kr. Singh for Respondent No. 1, M/s. Ashok Priyadarshi, A. Mathew and Dr. Shoba Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard learned counsel for the parties. The claimants are the widow and the children of deceased Shivchandra Lal Karn who died due to an accident.

2. The facts are that Shivchandra Lal Karn was conductor of bus bearing registration No. BR-06E-7536 and while he was standing on the road, another bus bearing registration No. BR-33P-5105 dashed against him as a result of which he died. With respect to the factum of accident and the facts involved there is no dispute. The Tribunal has come to the finding that the deceased Shivchandra Lal Karn died because of the rash and negligent driving attributed to the bus driver of bus No. BR-33P-5105.

3. The tribunal while granting the award has discarded the evidence of the witnesses and fixed the income of the deceased as Rs. 15,000/- per annum treating the income as a notional income on the ground that no document was produced on behalf of the claimants to show that the deceased was receiving an income of Rs. 3,000/- as claimed by them.

4. Two witnesses have been examined before the tribunal who are AW-1, wife of the deceased Shivchandra Lal Karn and AW-4-who has also supported the fact that Shivchandra Lal earned Rs. 3,000/-per month as a conductor of the bus.

5. Learned counsel appearing on behalf of the appellants submits that the court should not have discarded the evidence of AWs-1 and 4. It is submitted that merely because no document was produced to show that Shivchandra Lal Karn earned Rs. 3,000/- it cannot by itself be a ground of discarding the evidence of the witnesses.

6. While making his submissions, learned counsel relied on two judgments of the Supreme Court; one in the case of State of U.P. Vs. Hem Raj and Others, . In this case the Apex Court held that the oral evidence being on record and the fact that no documentary evidence has been placed, cannot be a reason for disbelieving the oral evidence and, thus, the High Court had erred in reducing the income of the deceased to Rs. 1,500/- and held that the evidence led in the case was sufficient to prove that the deceased was earning a sum of Rs. 3,000/- per month. Similarly, in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , the court rejected the claim that the notional income of Rs. 15,000/- should be adopted in a case where the deceased was a skilled labourer.

7. Against the aforesaid two decisions, counsel appearing on behalf of the Insurance Company referred to an unreported judgment in the case of Ponnunany @ Krishnan & Another vs. V.A. Mohanan & Another passed in Civil Appeal No. 2151 of 2008. The facts of this case indicate that as a result of a motor accident, the person concerned received head injuries which were serious and led to 100% disability. The injured had agricultural land measuring 5 acres. The tribunal on the basis of assessment of the evidence led by the parties fixed the compensation at Rs. 30,000/-. The High Court, on the other hand, had enhanced the amount of compensation to be Rs. 95,000/-with 7% interest. The claimants being aggrieved with the order prayed for compensation treating the income on the basis notional income which was allowed by the Supreme Court.

8. As above, the facts would indicate that the issues that arose in the case was quite different to the present case and as such the Insurance Company cannot derive any benefit from the judgment aforesaid. In fact it would appear, that since it is difficult to quantify agricultural income, the High Court fixed a notional income and enhanced the award amount.

9. The owner of bus bearing registration No. BR-06E-7536 has appeared in this case and denies that in fact his bus was responsible for the accident. This aspect of the case has been rejected by the Tribunal as it has been found that on the basis of the first information report, the charge-sheet and the evidence led, there is no material to substantiate such a claim of the bus owner. As such this court finds no merit in the contention raised above on behalf of the respondent bus owner.

10. The question that arises before this court is whether the court should accept

the evidence led by the claimants with respect to the income of the deceased on the basis of the oral evidence? The evidence on this issue has not been controverted by any other evidence, the only submission advanced on behalf of Mr. Priyadarshi is that there is a Government notification issued in exercise of clause (b) of sub-section (1) of Section 3 of the Minimum Wages Act, 1948 read with sub-section (2) of Section 5 of the said Act wherein the minimum wages have been fixed by the Government of Bihar with respect to different employees. The minimum wages of a conductor has been fixed at Rs. 1,846/- by notification dated 21.3.2004. It is submitted that on the basis of the wages fixed by the State of Bihar the claimants if, at all, would only be entitled to Rs. 1,846/- as shown in the chart. The notification by the State has been made in order to ensure that workers working under different categories are given at least the minimum wages prescribed for a particular job. It does not indicate that a particular person cannot be given wages higher than those fixed by the State of Bihar. There is, as already stated, evidence to show that the Shivchandra Lal Karn was earning Rs. 3,000/- per month and thus this Court cannot presume that the deceased was earning the minimum wages prescribed for the job.

11. The monthly income of Shivchandra Lal Karn was Rs. 3,000/-. The income would, thus, be Rs. 36,000/- per year. After deduction of 1/3rd of the account of personal expenses the income would be Rs. 24,000/- per year. It is not disputed that the age of Shivchandra Lal Karn was 29 years and according to the table as provided u/s 163A of the Motor Vehicles Act, the multiplier would be 18. This award amount would be Rs. 4,32,000/- payable to the claimants. Since the deceased has three minor girl children, 75% of the award amount should be put in a Nationalized Bank under fixed deposit so that they may receive monthly income which would help in their maintenance, education and other expenses. The claimants would also be entitled to payment of 6% interest on the award amount till the actual payment is made. Any amount which has been paid by way of interim relief or as a result of the tribunal's order, should be deducted while making the payment by the Insurance Company. In the result, this Misc. Appeal is allowed to the extent indicated above.