
(2004) 06 JH CK 0053
In the Jharkhand High Court
Case No : AFOO No. 3 of 2002

Binita Bartiyar and Others

APPELLANT

Vs

Anil Kumar Sinha and Another

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Citation : (2006) ACJ 1236 : (2006) ACJ 1236 : (2005) 1 JCR 517

Hon'ble Judges : Vishnudeo Narayan, J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : G. Mustafa, for the Appellant; Alok Lal, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The appellants are the widow and children of Late Pramod Kumar Bartiyar who died in an unfortunate Motor accident which took place on 18.10.1999 by Maruti Van bearing registration No. BR 14-B-6908 at Charhi Road, Hazaribagh. The deceased was aged 40 years and was posted as Senior Inspector in Steel Authority of India Limited and was getting a gross salary of Rs. 11,189/- p.m. The claimants-appellants claimed compensation of Rs. 70 lakhs.

2. The claims Tribunal took into consecration the net monthly salary i.e. Rs. 8,860/- which the deceased used to bring home after getting certain deduction, and calculated the annual Salary at Rs. 1,06,320/- and capitalized it on 12 year's purchase which come to Rs. 12,75,840/-. After deducting one third from the total amount the tribunal assessed compensation at Rs. 8,50,560/- and awarded interest @ 9% p.a. The Tribunal further held that if this amount of compensation (Rs. 8,50,560/-) is kept in long term fixed deposit for which the bank interest is 9% p.a., it will fetch Rs. 6,000/- per month which is the actual loss to the claimants. The appellants being not satisfied with the said award preferred this appeal for enhancement of compensation.

3. On 2.7.2003 this appeal was put up for hearing and in course of argument we tried to get the claim settled at Rs. 10 lakhs but the Insurance Company did not

agree to settle the claim. However at the request of Mr. Alok Lal, learned counsel appearing for the Insurance Company we referred the matter to the Lok Adalat but before the Lok Adalat the claim could not be settled. Hence this appeal has been listed for hearing and disposal on merit.

4. Mr. G. Mustafa learned counsel appearing for the appellant assailed the impugned award mainly on the ground that the Tribunal gravely erred in taking the net home salary of the deceased instead of the gross salary which was admittedly Rs. 11,180/- for the purpose of assessing the compensation. Learned counsel further submitted that the Tribunal has further committed illegality in taking only 12 years's of purchase for calculating the compensation. We find force in the submission of the learned counsel.

5. Admittedly the monthly gross salary of the deceased was Rs. 11,180/- which is evident from Exhibit 10 which is the pay slip issued by the Steel Authority of India Limited, Central Coal Organization. After certain deduction towards the provident fund etc. The deceased was bringing net salary of Rs. 8,861 every month. The Tribunal has failed to take into consideration that the amount which the deceased used to get deducted from his salary towards provident fund etc. was his personal savings for the purpose of future need of the family members like education and marriage. Whatever deduction made was being saved in the account of the deceased. Because of death the claimants have been deprived of those amounts also which the deceased used to save for them. In our considered opinion therefore, it is the gross salary and not the home take salary which shall be taken for the purpose of calculation of the monthly loss to the appellants. If this amount of Rs. 11,180/- being the salary of the deceased is taken into consideration the annual salary which the deceased used to get comes to Rs. 1,34,160/-. If one third of the aforesaid amount is deducted towards the expenses of the deceased the annual monthly dependency comes to Rs. 89,440/-.

6. It is well settled that the multiplier represents the number of year's purchase on which the loss of dependency is capitalized. It is equally well settled that he compensation amount should be such amount which if invested in long terms deposit it may take care of the dependency perpetually. Although the Tribunal has taken notice of this proposition and held that if the amount is kept in long term deposit the interest payable would be 9% but has failed to appreciate the fact that the interest payable by the bank in long term deposit has reduced to 4% to 5%. The amount awarded by the Tribunal therefore, if deposited in long term deposit will not take care of the dependency of the claimants perpetually.

7. Be that as it may. We are of the view that if the annual dependency of Rs. 89,440/- is capitalized by 12 year's of purchase the minimum compensation amount comes to Rs. 10,73,280/-. As noticed above after deducting one third of the gross salary of Rs. 11,180/- the monthly dependency comes to Rs. 7,454/- We are therefore, of the view that if a sum of Rs. 10,73,000/- is deposited in long term deposit it will atleast take care of the dependency of the claimants, besides the above admittedly the deceased was a young man of 40 years and

was holding the post of Senior Inspector in Steel Authority of India Limited and he had a future career and prospect. Taking into consideration all the facts and circumstances of the case we are of the considered opinion that a compensation of Rs. 10,73,000/- will be a reasonable compensation. The Tribunal has not taken the right approach in assessing compensation payable to the dependents of the deceased.

8. We therefore, allow this appeal and enhance the amount of compensation to Rs. 10,73,000/-. This amount will carry interest @ 9% per annum as awarded by the tribunal.

9. In the facts of the case there shall be no order as to cost.