

(2011) 04 OHC CK 0039
In the Orissa High Court
Case No : M.A. No. 417 of 2007

Chandra Mohanta and Others

APPELLANT

Vs

Makardhawaj Singh and Another

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2011) 04 OHC CK 0039

Hon'ble Judges : V. Gopala Gowda, C.J

Bench : Single Bench

Advocate : S.K. Mohanty, S. Mohanty, S.K. Paikray, S. Dei and S. Barik, for the Appellant; S. Ray, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—This Misc. Appeal is filed by the parents of the claimants being aggrieved by the award dated 20.2.2007 passed by the First Motor Accident Claims Tribunal, Keonjhar in M.A.C. Case No.290 of 2004 in awarding compensation of Rs.40,500/- to be paid by the Insurance Company within forty five days, failing which the same will carry interest " 9% per annum from the date of application till realization. The same is challenged by the parents seeking for enhancement of the compensation urging various other legal facts.

2. The main ground of attack of the award is that the Tribunal while quantifying the amount taken into account the age of the father of the deceased as 63 years and taking the income of Rs.1000/- per month awarded compensation of Rs.40,500/- is on the lower side and the same is contrary to the legal evidence on record the statutory provisions of Section 163 A of the Motor Vehicles Act and law on the question of awarding just and reasonable compensation. Since P.W.1 has stated in his evidence that at the time of the death of his son, he was earning Rs.3000/- per month and that should have been taken into consideration by the Tribunal Section 163 A of Motor Vehicles Act contains a special provision as to payment of compensation on structured formula basis as indicated in the

Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation of Rs.40,000/- per annum to be awarded with reference to the age and income of the deceased. After deducting 25% towards personal expenses, the age of the mother should have taken for the purpose of computation multiplying the lower age of the parent, namely, the mother of the deceased. Undisputedly, the age of the mother was 60 years. Therefore, the compensation awarded having answered the issue nos.1 to 3 in favour of the appellants is not represented to be a just and reasonable compensation. Therefore, learned counsel for the appellants requested this Court to award just and reasonable compensation by allowing this appeal.

3. Learned counsel for the Insurance Company had sought to justify the award placing strong reliance upon the judgment of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein the Apex Court after interpretation of Section 163-A of the Second Schedule-Structured formula has been correctly applied for the purpose of awarding compensation taking into consideration the income and age of the deceased as the Table does not specify the quantum of compensation for annual income more than Rs.40,000/-. It is possible to calculate compensation on structured formula basis where the income is more than Rs.40,000. The annual income multiplied by multiplier application to the age of the deceased would be the compensation. The discrepancies in multiplier scale given in the Second Schedule at paragraph-17 of the judgment after referring to various earlier decisions of the Supreme Court. In support of the contention, he further submitted that there is no satisfactory evidence adduced to show that there was contribution of income by the deceased to his parents. Therefore, the learned counsel for the Insurance Company submits that appellants are not entitled for enhancement of compensation.

4. With reference to the rival legal contentions, the following points arose for my consideration.

(i) Whether the claimants are entitled for enhancement of compensation?

(ii) What order?

5. The aforesaid points are required to be answered in favour of the appellants placing reliance upon the Section 163-A of the Motor Vehicles Act read with Second Schedule- Structured Formula. The Second Schedule contains a Table prescribing compensation, but the Table does not specify the quantum of compensation for annual income more than Rs.40,000/-Reliance has also been placed upon the evidence of P.W.1 and the claim made by the claimants is Rs.60,000/-. In the absence of documentary evidence by the gainful employer forming the monthly income as held by the Hon'ble Supreme Court reported in Sarla Verma & ors. v. Delhi Transport Corporation & Anr referred to supra, it is possible to calculate the compensation on the structural formula basis even where compensation is not specified with reference to the annual income of the

deceased or is more than Rs.40,000/-. In this case, the Tribunal has not taken into consideration the claim made by the claimants and also has not taken into consideration the evidence of P.W.1 and passed the award ignoring the structural formula. That should have been taken into consideration and 1/3rd out of Rs.40,000/- should have been deducted towards the personal expenses. Out of Rs.40,000/- if Rs.10,000/- is deducted, the remaining Rs.30,000/- should be the annual income as per the decision of the U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . At paragraph-21 in Sarla Verma's case, while answering the deduction towards personal living expenses, it is no doubt 50%. Having regard to the facts of this case, it would be deemed fit and proper to deduct Rs. 1000/- per month. So in twelve months it comes to Rs. 12000/-. The remaining amount of Rs.28,000/- should be computed towards dependency of the claimant-appellants. At paragraph-21 Hon''ble Supreme Court has held that what should be the multiplier to be used as mentioned in Column-4 of the Table, Second Schedule. In so far as the age group of 56-60, multiplier 9 must be taken. Admittedly, in this case the age of the mother is 60 years. Therefore, the dependency loss of the deceased is Rs.28,000/- should be multiplied by 9. The total amount comes to Rs.2,52,000/-. Besides that if on conventional head i.e. funeral expenses of Rs. 10,000/-, Rs. 10,000/- towards loss of love and affection to each one of the parent and Rs. 10,000/- towards loss of estate, in total Rs.40,000/- under the conventional heads is added to Rs.2,52,000/-, then it comes to Rs.2,92,000/-. The amount of Rs.2,92,000/- shall carry interest " Rs.6% per annum from the date of claim petition till the date of deposit of the said amount. The aforesaid amount of compensation with interest shall be deposited before the 1st.. Motor Accidents Claims Tribunal, Keonjhar within a period of four weeks from the date of receipt of certified copy of this order.

6. The MACA is accordingly allowed.