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In the Chhattisgarh High Court

Case No : M.A. No. 162 of 2002

Chhaganlal Dewangan and Others — APPELLANT

Vs

Raju Ram and Others — RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 4 MPJR 136

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.

This order shall govern the disposal of M.A. No. 162/2002 filed by the claimant for enhancement of compensation and cross-objection, M.(C.) P. 1243/2005, filed by respondents 1 & 2 challenging the exoneration of respondent No. 3 from liability to pay compensation.

The impugned award was passed by the Fifth Additional Motor Accident Claims Tribunal, Bilaspur in claim Case No. 89/2001 on 10th October, 2001.

The facts, briefly stated, are as under: -

The appellants/ claimants, unfortunate parents and younger brother of deceased - Ram Khilawan Dewangan, filed a Claim Petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 22,83,000/- for his death in the motor accident which took place on 18.2.2000 when he was dashed by the offending truck bearing the registration No. MP 26-D/5183 on account of rash and negligent driving of the said truck by its driver. The claimants pleaded that the deceased was a cleaner in the said truck and was earning Rs. 3000/- per month. The driver and owner of the truck remained ex-parte. They did not file their written statements. The insurer filed the written statement and opposed the claim filed by the claimants. It took specific plea that the driver of the vehicle, Rajuram, was not having a valid driving license on the date of the accident, therefore, no

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liability can be fastened on the Insurance Company. The claimants examined Chhaganlal Dewangan (AW-1) Ganeshram (AW-2) and Shyam Sunder (AW-3) in support of their claim petition, whereas, respondent No. 3 examined S.P. Baksh (NAW-1) and Alexender Toppo (NAW-2) in rebuttal.

The Tribunal accepted the contention of the claimants that the deceased was earning Rs. 3,000/- per month. After deducting l/3rd towards the personal expenses of the deceased, the dependency was worked out to Rs. 2,000/- per month and Rs. 24,000/- per annum. The deceased was aged about 22 years. The Tribunal applied multiplier of 16 to the annual dependency of Rs. 24,000/ - and compensation was worked out to Rs. 3,84,000/-. The Tribunal further awarded a sum of Rs. 7,000/- under other heads and the total amount of compensation was worked out to Rs. 3,91,000/-. The Tribunal also awarded interest at the rate of 9% per annum from the date of filing of the Claim Petition till realization. The Tribunal held that respondent No. 1 was having no valid driving license on the date of the accident, therefore, the Insurance Company was not liable to pay compensation and it was directed that the amount of compensation shall be payable by the owner and driver.

Mr. Manoj Mishra, learned counsel appearing on behalf of the appellants / claimants, argued that the Tribunal has awarded low compensation to the appellants and has wrongly exonerated the Insurance Company.

Mr. Wasim Miyan, learned counsel appearing on behalf of respondents 1 & 2, also argued that the Insurance Company has been wrongly exonerated. He pressed his cross-objection which was mainly filed against the exoneration of the Insurance Company for want of a valid driving licence with respondent No. 1.

On the other hand, Mr. Shree Kumar Agrawal, learned Sr. Counsel appearing on behalf of respondent No. 3, opposed these arguments and supported the award passed by the Claims Tribunal.

So far as quantum of compensation is concerned, we find that the claimants themselves pleaded that the deceased was working as a cleaner and he was earning Rs. 3,000/- per month. The above contention was accepted by the Claims Tribunal. Further the Tribunal was quite liberal in deducting only 173rd towards the personal expenses of the deceased. The deceased was a bachelor, therefore, the deduction ought to have gone to the extent of one - half in view of the judgement of the Supreme Court rendered in the matter of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, In which, it was held that the general rule regarding deduction from the income of the deceased is 50%, if he is a bachelor and one - third if he is married. We further note that the Tribunal has applied multiplier of 16 which also appears to be on the higher side in light of the fact that the appellants were parents and appellant No. 1 - Chhaganlal Dewangan was aged about 50 years and appellant no. 2 - Binda Bai was aged about 40 years and they were having their own earnings, and appellant No. 3- Rajuram Dewangan was a dependent on appellants No. 1 & 2 and not on the

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deceased. The Tribunal has been further liberal to award interest at the rate of 9% per annum. We, therefore, find that there is hardly any scope for enhancement of amount of compensation already awarded to the appellants / claimants for the death of deceased - Ram Khilawan Dewangan in the motor accident.

So far as exoneration of Insurance Company is concerned, the Tribunal has taken into account the evidence of S.P. Baksh (NAW-1) and Alexender Toppo (NAW-2). S.P. Baksh (NAW-1) was working as Clerk in the office of the R.T.O., Bilaspur. He came with the records of the R.T.O. office and deposed that the driving license issued in the name of the respondent No. 1, Rajuram Dewangan, was valid only up to 26.2.99 and it was not valid after the said date. The said evidence is intact on record as nothing adverse could be brought in rebuttal. It is on this evidence, the Tribunal held that respondent No. 1 was having no valid driving licence on the date of the accident which took place on 18.2.2000. Though Mr. Wasim Miyan argued that after the said date the licence was renewed from R.T.O. Korba, but he could not substantiate his argument by any material on record. In the appeal, along with an application, a letter of R.T.O., Korba has been filed in which it is mentioned that the said license was renewed by their office up to 24.3.2006. This was a letter dated 28.9.2005. Copy of the license has not been filed. Even on the basis of this letter, it was not clear that the license was renewed from the said office from which date till 23.4.2006 was contained in the letter. Therefore, it was not at all established on record that the driving license issued in favour of respondent no. 1 was valid on the date of the accident and the finding recorded by the Tribunal that respondent No. 1 was having no valid driving license on the date of accident cannot be interfered.

For the foregoing reasons, we do not find any substance either in the appeal or in the cross -objection filed vide M.(C)P. no. 1243/2005.

The appeal and cross- objection, therefore, are liable to be dismissed and are hereby dismissed.

No order as to cost.

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