(2015) 07 SIK CK 0007

In the Sikkim High Court

Case No : MAC App. No. 07 of 2015

Dhan Maya Lepcha and Others — APPELLANT

Vs

The Branch Manager, National Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Minimum Wages Act, 1948 — Section 5
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2015) 07 SIK CK 0007

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

Bench : Single Bench

Advocate : Pema Wangmu Bhutia, for the Appellant; Thupden G. Bhutia, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sunil Kumar Sinha, C.J—The Appellants/Claimants are mother and younger brother of deceased Phurmit Lepcha, who died in a motor accident on 22.04.2014. She was unmarried and was aged about 25 years. She had undergone training for tailoring from Government of Sikkim. During the period of training she was getting stipend of Rs. 6,600/- per month. After completion of her training, she was likely to begin her tailoring shop, but in fact the shop had not begun till the date of accident. Thus, there was no income of the deceased at the time of the accident. The Appellants filed a claim petition under Section 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for short, ''the Tribunal''), which was registered as MACT Case No. 11 of 2014. The Tribunal after perusal of the entire evidence available before it held that the accident occurred on account of rash and negligent driving of the offending vehicle by the driver and the Insurance Company was liable to pay compensation. The Tribunal, relying on the Judgment of State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) ACJ 1800 : AIR 2003 SC 3696 : (2003) 1 JT 601 Supp : (2003) 135 PLR 414 : (2003) 6 SCALE 113 : (2003) 7 SCC 484 : (2003) 2 SCR 245 Supp : (2003) 2 UJ 1527 : (2003) AIRSCW 4198 :

(2003) 6 Supreme 206 , held the monthly income of the deceased as Rs. 3,000/-. Applying multiplier of 18 and deducting 50% towards personal expenses of the deceased, the Tribunal awarded Rs. 3,24,000/- as loss of earning. The Tribunal also awarded Rs. 25,000/- towards funeral expenses; Rs. 2,500/- towards loss of estate and Rs. 50,000/- towards non-pecuniary damages. The Tribunal, thus, awarded a total sum of Rs. 4,01,500/- as compensation to the Appellants on account of death of deceased Phurmit Lepcha in the motor accident. The Tribunal also awarded interest @ 10% per annum from the date of filing of claim petition i.e. 22.05.2014 till realization.

2. Ms. Pema Wangmu Bhutia, learned counsel appearing on behalf of the Appellants, has submitted that the reliance placed on Jasbir Kaur (supra) was incorrect; the facts of the said case are quite different; the Tribunal ought to have relied on the notification dated 06.04.2013 (Exhibit-35) issued by the Government of Sikkim, Department of Labour in which the daily wages of semi-skilled labour was notified as Rs. 220/- per day.

3. On the other hand, Mr. Thupden G. Bhutia, learned counsel appearing on behalf of Respondent No. 1/Insurance Company has opposed these arguments and supported the award passed by the Claims Tribunal. Ms. Rajani Rizal and Ms. Rupa Dhakal, learned counsel appearing on behalf of Respondent No. 2 have supported the contentions of Mr. Bhutia.

4. I have heard counsel for the parties.

5. Admittedly, the deceased was unemployed. The Tribunal, on the basis of Jasbir Kaur (supra), has held that the notional income of the deceased should be taken as Rs. 3,000/- per month. On perusal of the Judgment of Jasbir Kaur, it would be clear that the facts in the said case were totally different. There the deceased, who lost his life in a vehicle accident on 03.02.1999, was a male member of the family and was survived by his widow and minor son (Respondents 1 and 2 therein). He was having some agricultural lands which he was cultivating during his life time. The Supreme Court held that the lands possessed by the deceased, after his death, still remain in the hands of the claimants as his legal heirs and the claimants may be required to engage persons to look after agriculture. Thus, normal rule about deprivation of income would not be strictly applicable to the income through agricultural source. Considering these circumstances, the Supreme Court held that Rs. 3,000/- per month should be fixed as income of the deceased. I am of the view that in the above facts and circumstances, the finding recorded by the Tribunal placing reliance on the Judgment of Jasbir Kaur is incorrect and the same has to be set aside.

6. Now the question arises as to what should be the income of the deceased in the present case. As far as reliance placed on Exhibit 35 is concerned, this is a notification issued by the Government of Sikkim in exercise of powers conferred by clause (b) of sub-section (2) of Section 5 of the Minimum Wages Act, 1948. The Government has classified the categories of the workers and has revised the

rates of minimum wages, as are specified in the Table annexed to this notification, payable to them. We may note that this notification is made applicable to the workers employed in the scheduled employments mentioned in paragraph 1 thereof. Though, tailor has been held to be a semi-skilled worker in this notification with revised rate of daily wages of Rs. 220/-, but it would be a case when he/she is employed in the scheduled employment as per the notification. Here, the deceased was not in employment at the time of the accident. Therefore, this notification would not be applicable in her case and strict calculation on the basis of this notification cannot be done as there may be cases in which one may be unskilled, semi-skilled, skilled or highly skilled worker as categorized in Table 1 of the notification, but he or she may not choose to go in employment as per his/her skill and thus may not earn the wages prescribed in this notification.

7. The second schedule prepared under Section 163A of the Motor Vehicles Act prescribes notional income of Rs. 15,000/- per annum for a non-earning person. I am of the view that if the income of the deceased was not proved or it was held that the deceased had no income on the date of the accident, the Tribunal ought to have resorted to the notional income prescribed in the second schedule. Rs. 15,000/- per annum was prescribed in the second schedule on 14.11.1994. In the instant case, the accident took place on 22.04.2014. Considering the increase in prices of the essential commodities and the cost of living in between 1994 till 2014 (about 20 years), the notional income of Rs. 15,000/- prescribed in the year 1994 can reasonably be held as Rs. 45,000/- in the year 2014. I, therefore, propose to re-calculate the compensation awarded to the Appellants taking Rs. 45,000/- as the annual income of the deceased.

8. The deceased was aged about 25 years, therefore, the multiplier of 18 adopted by the Tribunal appears to be correct. Applying multiplier of 18 to the annual income of Rs. 45,000/-, the income comes to Rs. 8,10,000/-. By deducting 50% towards the personal expenses of the deceased, as she was unmarried and Appellant No. 1 is her mother and Appellant No. 2 is likely to come with his own income after some time, the dependency comes to Rs. 4,05,000/-. By adding further sum of Rs. 77,500/- towards other heads like funeral expenses, loss of estate and non-pecuniary damages, as allowed by the Tribunal, the total amount of compensation comes to Rs. 4,82,500/-.

9. Thus, the Appellants shall be entitled to receive Rs. 4,82,500/- as compensation on account of death of deceased Phurmit Lepcha in the motor accident and Respondent No. 1/Insurance Company shall be liable to pay the said amount to the Appellants.

10. Respondent No. 1/Insurance Company has already paid Rs. 4,35,270/- to the Appellants on 01.04.2015 which includes the amount of compensation awarded by the Tribunal as also interest on the said amount till the date of payment. Thus, Respondent No. 1/Insurance Company shall now pay a sum of Rs. 81,000/- (enhanced amount of compensation) along with interest @ 10% per

annum on this amount from the date of filing of the claim petition till realization.

11. The Appeal is allowed to the extent indicated above. There shall be no order as to costs.

