(2008) 09 CHH CK 0026

In the Chhattisgarh High Court

Dhan Singh Chandan and Another APPELLANT

Vs

Murharam and Others RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 5 MPHT 20

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.R. Deshmukh, J.—Heard finally.

2. This is claimant''s appeal for enhancement of compensation. The Additional Motor Accidents Claims Tribunal, F.T.C., Kondagaon (henceforth ''the Tribunal'') has in Claim Case No. 106/2007 on dated 28-12-2007 awarded compensation of Rs. 1,78,400/- to the claimants for the death of their 19 year old daughter in a vehicular accident.

3. Brief facts are that on 17-2-2006, daughter of the claimants, Ku. Pramila, aged about 19 years, was travelling as a labourer in a Tractor bearing Registration No. M.P.-25-B/2359 and Trolley driven by respondent No. 4 herein. The said tractor was dashed by Tata 709 vehicle bearing Registration No. MP-19-A/8471 driven by respondent No. 1, owned by respondent No. 2 and insured by respondent No. 3. Ku. Pramila died due to the accident. Evidence was led by the claimants to show that Ku. Pramila was a trained potter and also used to work as a labourer. The Tribunal assessed daily income of the deceased at Rs. 100/- and taking working days of the deceased in a month to be 26, assessed monthly income at Rs. 2,600/- and assessed yearly income at Rs. 31,200/-. It deducted 2/3rd, i.e., Rs. 20,800/- from the yearly income towards personal expenses of the deceased and assessed loss of dependency at Rs. 10,400/- and applying multiplier of 16 assessed loss of dependency at Rs. 1,66,400/-. In addition to

this, the Tribunal assessed Rs. 2,000/- towards funeral expenses and Rs. 10,000/- (Rs. 5,000/- to each claimant) towards loss of love and affection. In this manner, the Tribunal awarded compensation of Rs. 1,78,400/- to the claimants.

4. Shri Vaibhav A. Goverdhan, learned Counsel for the appellants/claimants raised only two grounds in this appeal. Firstly that while assessing loss of dependency the Tribunal ought to have deducted only 1/3rd from the annual income of the deceased towards her personal expenses. Reliance was placed on Bilkish v. United India Insurance Co. Limited and Anr. reported in 2008 AIR 5040 SCW. Lastly, it was urged that the Tribunal ought to have awarded compensation for loss of estate. No other ground was urged.

5. On the other hand, Shri Sudhir Agrawal, learned Counsel for respondent No. 3 argued in support of the impugned award that deduction of 2/3rd towards personal income of the deceased was justified in view of the decision of the Supreme Court of India in Donat Louis Machado and Ors. v. L. Ravindra and Ors. 2000(1) TAC 208 (SC). It was also urged that multiplier of 16 adopted by the Tribunal was already on the higher side because the claimants would have got the deceased married within a couple of years and would have ceased to be dependant on the income of deceased.

6. Having considered rival submissions, I have perused the record. The insurer neither preferred an appeal against the award passed by the Tribunal nor filed a cross-objection against any finding recorded by the Tribunal. The claimants have led clinching evidence oral as well as documentary before the Tribunal to show that the deceased was a trained potter and would have earned at least Rs. 100/- per day besides earning as a labourer. In my considered opinion, the Tribunal has rightly assessed the yearly income of the deceased at Rs. 31,200/-.

7. In Bilkish v. United India Insurance Co. Limited and Anr. (supra), it was held that the deceased, who was a bachelor would not have spent more than 1/3rd of his total income for personal use and rest of the amount earned by him would have gone to the family kitty. Therefore, deducting 50% of his income towards personal expenses was not proper. So far as the case of Donat Louis Machado and Ors. v. L. Ravindra and Ors. (supra), relied by learned Counsel for respondent No. 3/insurer is concerned, in that case, the Apex Court had considered that the deceased would, besides his parents, be required to support his own family in future. Under these circumstances, it was held by the Apex Court that the deceased would have spent at least 2/3rd of the amount on his own family and 1/3rd of the amount on the parents.

8. No straitjacket formula can be prescribed for deviating from the prescribed norm of deduction of 1/3rd of the income towards personal expenses of the deceased in the second schedule. The facts and circumstances of each case would determine whether deviation from the prescribed norm under the second schedule is justified or not. In the present case, the deceased was not married

and had to support her parents. The deceased was the eldest daughter of the claimants and was looking after her parents and other sibling from her earnings as a potter and as a labourer. The claimant had stated specifically on oath that the deceased was determined not to marry and being the eldest daughter to serve the family for the rest of her life. Therefore, in the above circumstance, the Tribunal was not justified in deducting 2/3rd of annual income of the deceased towards personal expenses and ought not to have deviated from the prescribed noun and should have deducted only 1/3rd of the total income towards personal expenses of the deceased.

The deceased was only 19 years, old, when her life was cut short due to the unfortunate accident. The claimant-parents were aged 40 and 38 years. Taking the average age of the claimants/parents at 39, the multiplier of 16 adopted by the Tribunal being in conformity with the second schedule is proper. In the facts and circumstances, it appears proper to award a sum of Rs. 2,500/-towards loss of estate. The yearly income of the deceased as assessed by the Tribunal is Rs. 31,200/-, deducting 1/3rd, i.e., a sum of Rs. 10,400/- towards personal expenses of the deceased, loss of yearly dependency is assessed at Rs. 20,800/-. Applying multiplier of 16, total loss of dependency is assessed at Rs. 3,32,800/-. Adding to this, Rs. 2,000/- towards funeral expenses, Rs. 2,500/-Lowards loss of estate, Rs. 5,000/- to each claimants towards loss of love and affection, total compensation which should have been awarded by the Tribunal is assessed at Rs. 3,47,300/-.

9. In the result, the appeal is allowed. The compensation of Rs. 1,78,400/- awarded by the Tribunal is enhanced to Rs. 3,47,300/-. Alter adjusting the amount already paid, if any, the respondent No. 3/Insurance Company shall also be liable to pay interest @ 6% per annum on the remainder from the date of application u/s 166 of the Motor Vehicles-Act till realisation of the amount of compensation.

