(2014) 12 PAT CK 0096

In the Patna High Court

Case No : Miscellaneous Appeal No. 135 of 2013

Divisional Manager APPELLANT

Vs

Anju Sinha RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 2 BLJud 94

Hon'ble Judges : Mr. Rakesh Kumar, J.

Bench : Single Bench

Advocate : Mr. Ashok Priyadarshi, Advocate, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Rakesh Kumar, J.(Oral)—Heard Sri Ashok Priyadarshi, learned counsel, who has appeared on behalf of the appellant / Divisional Manager, Oriental Insurance Company, Muzaffarpur.

2. The present appeal under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as ?the Act?) , has been preferred against the judgment dated 22/8/2012 and award dated 2/9/2012 passed by learned Ad-hoc Additional District Judge 5th ? cum- Motor Vehicle Claims Tribunal, Muzaffarpur, in M.V. Claim Case No.123 of 2008. By the said judgment and award the learned Tribunal, while allowing the claim case, has directed the appellant / insurer of the Bus bearing Registration No. BR06B/6606 (hereinafter referred to as the "offending vehicle") to pay total compensation amount of Rs. 34,39,491/-.

3. Short fact of the case is that on 23/2/2008 in the night husband of respondent no. 1, namely, Niteshwar Thakur was dashed by the offending vehicle. The accident had occurred due to rash and negligent driving by the driver of the offending vehicle. The injured was carried to Magadh Hospital, Patna, who died on 26/2/2008. In view of death in a vehicular accident claim petition was filed under Section 166 and 140 of the Act for interim compensation, which was

numbered as Claim Case No. 123 of 2008. The claimants had claimed total compensation amount of Rs. 51,65,880/-. However, the learned Tribunal on the basis of income of deceased, who at the time of accident was Branch Manager in Uttar Bihar Kshetriya Gramin Bank has calculated the compensation amount. Before the Tribunal sufficient documentary evidences were brought on record to show that deceased was receiving total Rs. 32,729=70/- per month as salary. The deceased, at the time of death, was aged about 49 years. In view of salary certificate of deceased compensation amount was calculated and claim has been allowed with a direction to pay compensation amount i.e. Rs. 34,39,491/-.

4. Sri Ashok Priyadarshi, learned counsel for the appellant, has tried to persuade the court that the learned Tribunal has not taken into account the income of deceased in strict principle as laid down by the Apex Court in a case reported in (2009) 6 SCC 121 [Sarla Verma (Smt) And Others v. Delhi Transport Corporation And Another]. He submits that while taking into account the income of deceased on the basis of salary certificate, it was required on the part of the Tribunal to deduct the amount of house rent as well of Income Tax, which has not been done by the Tribunal, and as such, the judgment and award on this issue is required to be interfered with.

5. In course of hearing, on being asked as to whether the judgment and award has been prepared by the Tribunal in strict compliance with the principle laid down in Sarla Verma Case (Supra), Sri Ashok Priyadarshi fairly accepted that compensation amount has not been strictly calculated in terms of the principle laid down in Sarla Verma Case. It is evident that the learned Tribunal while considering the income of deceased and calculating compensation amount has not considered future prospect of the deceased, as held in Sarla Verma Case which has subsequently been reiterated by the Apex Court recently in (2013) 9 SCC 65 [Reshma Kumari And Others v. Madan Mohan And Another]. It is further evident that though the Tribunal has directed to pay compensation amount, the Tribunal has failed to direct for making payment of interest on the compensation amount from the date of filing of claim petition. Instead the learned Tribunal has directed to pay compensation amount to the applicants / claimants with 9% interest from the date of order till actual payment. Sri Ashok Priyadarshi, has not disputed the proposition that interest is required to be calculated from the date of filing of claim petition. However, he submits that, in normal course rate of interest is 6% whereas, the Tribunal has directed to pay interest of 9% per annum.

6. In view of the facts and circumstances, the court is of the considered opinion that if the judgment and award is interfered with in the light of order of Sarla Verma Case in strict compliance of Sarla Verma Case, there is possibility of even enhancement of compensation amount, however, since it is the appeal by the insurance company, the court may refrain from passing order for enhancement of compensation amount.

7. In view of the above facts and circumstances, the compensation amount which

has been fixed by the court below requires no interference. Accordingly, the appeal stands dismissed.

8. In view of dismissal of this appeal, office is directed to remit back the statutory amount which was deposited at the time of filing of the appeal to the court below for its payment / adjustment against the award amount forthwith. Since on merit the court has not interfered with the judgment and award, there is no point for passing any favourable order on the interlocutory application i.e. I.A. No. 5487 of 2013, which has been filed for condoning delay. Accordingly, on limitation petition , there is no requirement to pass any positive order.