
(2019) 12 JH CK 0037

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 192 of 2019

Divisional Manager, National Insurance Company Limited

APPELLANT

Vs

Usha Devi And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Indian Penal Code, 1860 — Section 279, 304A, 327

Citation : (2019) 12 JH CK 0037

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Amaresh Kumar

Final Decision : Disposed Of

Judgement

1. The appellant has preferred this appeal against the award dated 13.02.2019 passed in Motor Accident Claim Case No.68 of 2016 passed by learned District Judge-II-cum- Motor Accident Claims Tribunal, Bokaro whereby the claimant has been awarded compensation to the tune of Rs. 6,78,000/- along with simple interest @6% per annum from 09.09.2016 payable within 90 days failing which the Insurance Company has to pay an interest @9%.

2. Learned counsel for the appellant has submitted that such penal interest is unnecessarily imposed by the learned Tribunal as the statutory period to prefer an appeal is 90 days under the Motor Vehicle Act, under section 173 of the Motor Vehicle Act. Learned counsel for the appellant has further submitted that this appeal has been filed within time, as such, imposition of penal interest is erroneous consideration by the learned Tribunal. Learned counsel for the appellant has further submitted that deceased Aman Shekhar, son of the claimant was admittedly a student of Class-XII who has no income but the Tribunal has awarded compensation considering his notional income to be Rs. 6000/- per month, as such, the award is bad under law.

3. Heard, learned counsel for the appellant and perused the impugned award. It appears that deceased Aman Shekhar was going on scooty bearing registration no. JH-09X-3496 along with his friend on 20.06.2016, when a Tata Indica Xeta Car bearing registration No. JH-09J-1496 hit the scooty causing injury to Aman Shekhar, who died during treatment at Bokaro General Hospital on 22.06.2016 at 4.30 P.M. The F.I.R. has been lodged against the driver of Tata Indica Xeta Car No. JH-09J-1496 vide Sector-4 P.S. Case No. 105 of 2016, G.R. Case No. 881 of 2016 dated 23.06.2016 under sections 279/327/304A of I.P.C. and after investigation police submitted chargesheet. The offending vehicle was insured before the National Insurance Company Limited bearing policy No. 55270031166160007742 for the period from 30.04.2016 to 29.04.2017 and the accident took place on 20.06.2016 i.e. within the said policy period.

The learned Tribunal has considered the notional income of the deceased who was a student of Class-XII as Rs. 6000/- and accordingly calculated the amount.

4. After hearing the learned counsel for the appellant and on perusal of the impugned award, this Court considered the computation made by the learned Tribunal is in accordance with law, as the Tribunal has also deducted 50% towards personal and individual expenses of the deceased. The multiplier of 18 has been used but did not calculate the future prospect of the deceased. Apart from this, the learned Tribunal has also not taken judicial notice with regard to Rs. 40,000/- which ought to have been paid under the heading consortium, in view of the judgment of National Insurance Company Limited vs. Pranay Sethi & Ors. as reported in (2017) 16 SCC 680 at Para-59. This Court is aware of the fact that compensation is not a windfall gain nor a bonanza for the claimant but being a socio beneficial legislation, the Court should not interfere with the award if it is otherwise found to be proper and just compensation. Since the Tribunal has not calculated and added the future prospect and loss of consortium, as such, this Court is not inclined to interfere with the impugned award but so far the interest is concerned, the Tribunal has awarded the compensation amount of Rs. 6,78,000/- along with simple interest @6% per annum from the date of application i.e. 09.09.2016 to be payable within 90 days failing the Insurance Company has to pay an interest @9% per annum. The Tribunal ought to have taken notice of the judgment of Dharmpal and Sons vs. UP State Road Transport Corporation; 2008 (4) JCR 79 SC, where the Hon'ble Apex Court has awarded simple interest @7.5% from date of filing of claim application.

5. Considering in totality, the aforesaid amount of award i.e. Rs. 6,78,000/- is affirmed with simple interest @7.5% from 09.09.2016 till its realization.

6. Accordingly, the appeal is disposed of.

7. Learned Tribunal is directed to indemnify the aforesaid amount within a period of 90 days from today.

8. The Registrar General of this Court is directed to release the statutory amount of Rs. 25,000/- deposited before this Court while preferring the appeal by the

learned counsel for the appellant within four weeks from the date of filing of requisition.