
(2002) 03 PAT CK 0041

In the Patna High Court

Case No : Miscellaneous Appeal No. 214 of 1995

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Shrimati Sumitra Devi and Others

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Citation : (2002) 2 BLJR 1294

Hon'ble Judges : Someshwar Nath Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Someshwar Nath Pathak, J.—This miscellaneous appeal is directed against the judgment dated 19th May, 1995 passed by the District Judge (Claims Tribunal), Madhubani. In claims Case No. 15/93. The claimant-applicant of the aforesaid claims case, Sumitra Devi, was allowed compensation of Rs. 96,000/- on account of death of her son Dinesh Yadav in a motor accident that occurred on 4.5.1993 at 11.30 a.m. The New India Assurance Company is the appellant here.

2. Both sides were heard.

3. It was submitted by the appellant's lawyer that the deceased was a boy of 18 years and he was going to Bombay in search of a job. So admittedly, the deceased was not earning any income and, hence the compensation amount should not have fixed at Rs. 96,000/-. It was further submitted that principle of interest accruing from the fixed deposit of a lump sum should have been applied and, moreover, since the accident took place when the M.V. Act, 1988 was in force, the lower Court should not have allowed the aforesaid compensation amount. Since the deceased was not earning any income, notional income of Rs. 500/- per month should have been assessed as his income and hence his annual income would be Rs. 6000/-. Deducting 1/3rd of the same, Rs. 4000/- should have been fixed as the annual dependency amount. So at best Rs. 50,000/- should have been fixed as the compensation amount, which would fetch an

annual income of Rs. 4,500/- from the fixed deposit account of this amount.

4. However, I am not in agreement with the submission of the appellant's lawyer because when an unemployed person dies, amount of compensation should be fixed in such a way as would give an appropriate compensation amount to the claimant of the deceased. Of course, the liability of payment would arise under the M.V. Act, 1988. Under this Act, no criteria was fixed for calculating compensation amount in consequence of which it was the practice of various Courts to calculate compensation amount without applying any fixed standard resulting in divergent compensation amount being fixed by the various Courts throughout India. So, M.V. Act, 1994, was enacted and amendment was introduced in the M.V. Act, 1988, providing for certain principles to be adopted in calculating the compensation amount. M.V. Act, 1994 has not repealed the entire Act of M.V. Act, 1988, rather it has introduced an amendment which may amount to incorporating the amended provision into the old Act of 1988, So, I am of the opinion that under the Interpretation of Statutes Act, the provision under the M.V. Act, 1994, shall be used when the Court was assessing the compensation amount. The Court awarded the compensation amount on 19th May, 1995 when M.V. Act, 1994, was already in force. The contention of the appellant's lawyer in this connection was that this Act is not applicable in view of General Clauses Act. The liability under the old Act of 1988, will be in respect of the person of the entities who would be held liable for payment, but the principle in calculating the compensation amount introduced in the amendment may be utilised while fixing the compensation amount after the promulgation of the new Act of 1994. In the new Act a notional income of Rs. 15,000/- has been fixed as the income of the non-earning member of the family of the claimant who dies in a motor accident. Even if Rs. 15,000/- is not taken to be annual income of the deceased in the instant case, at least an amount of daily wage earner may be taken to be the daily income of the deceased Dinesh Yadav who was 18 year old and capable of earning, although unemployed. In the year 1993 the prevailing Govt. rate of a daily wage earner was Rs. 40/- and, so, the monthly income of the deceased would be Rs. 1200/-. The annual income thus would be Rs. 14,400/- If 1/3rd, of the same is deducted, the remaining amount Rs. 9,600/, would become the dependency amount for the claimant. If one lakh and odd is deposited into the fixed deposit, it will fetch an annual income of Rs. 9000/- and odd at the rate of 9% per annum interest. So, if the principle of fixed deposit interest is adopted in this case, the compensation amount would be one lakh and more. The Tribunal has awarded only Rs. 96,000/- as compensation amount in the claimant Sumitra Devi. I am, therefore, of the opinion that the amount of compensation fixed by the Tribunal was neither excessive nor exorbitant in view of the circumstances of the case. Sumitra Devi lost her young son who had or may have a prospect in his life. The primary principle adopted by the Tribunal should be to fix a just and equitable amount of compensation to the claimant and it should not be arbitrary. Even lump sum amount of Rs. 96,000/- in the circumstances of the case was not excessive or exorbitant, I am therefore not attaching any importance to the

objection of the appellant's lawyer.

5. In the result, this appeal is dismissed. The other observations regarding interest etc. passed by the Tribunal shall remain intact.