(2012) 10 PAT CK 0083

In the Patna High Court

Case No : Misc. Appeal No. 175 of 2010

Divisional Manager, United India Insurance Company Ltd. APPELLANT

Vs

Bibi Haraira Khatun and Others RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : (2012) 4 PLJR 738

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Durgesh Kumar Singh, for the Appellant; Ajay Kumar Chakraborty for the O.P. 3 and 4 and Mr. Vivekanand Vivek for the Claimants, for the Respondent

Judgement

Ajay Kr. Tripathi, J.—The Insurance Company is before this Court, because they are not happy with the quantification of the award, given in favour of the claimants. The judgment or award under challenge has been passed in MACT Case No. 68 of 2003 and is dated 24th of November, 2009. One Md. Zullo aged about 18 years was working as a Khalasi in Tata Maxi Vehicle, bearing Registration No. BR-10M-6364. He met with an accident on 3rd of April, 2003 with the same vehicle due to rash and negligent driving by the Driver of the vehicle. It caused extensive injury to his head and legs. He succumbed to his injury. Subsequently, the claim petition came to be filed by father and mother of the deceased.

2. Evidence was produced in support of the claim petition on behalf of claimants. So far as the Insurance Company is concerned, no witness had been examined on their behalf. Only two exhibits were marked, one is, the certification issued by the District Transport Officer of Bhagalpur, showing that driving License No. 2115 of 1996 was not issued in favour of Md. Ishak. This was marked as Exhibit-A, Exhibit-B is the report of the so-called Investigator, dated 27.10.2003. The whole case thereafter has been built up on these two documents, filed on behalf of Insurance Company. They want to shake off their liability on the basis of those

two documents alone and the so-called bald denial of the allegations in their written statement.

3. Several propositions have been pressed into service by learned counsel appearing for the appellant-Insurance Company.

4. With due respect to the learned counsel representing the Company, he has made a valiant effort to redeem the situation on behalf of the Company. But the submissions, which have been made, have no applicability to the present facts and circumstances of the case, in absence of those evidence and materials or serious contest, which was required to be lodged or put up before the Tribunal. The submissions, whether the Tribunal was correct in shifting the burden upon the Insurance Company in absence of Exhibit-A or whether the income, which was pleaded as earning of the deceased being correct or incorrect as well as the fact whether the calculation or the formula which have been applied in awarding the compensation amount is based on correct application thereof are all academic.

5. After having gone through the decision of the Tribunal, having heard the submissions even made on behalf of the owner of the vehicle as well as the claimant, the Court comes to a considered opinion that the only opening, which appellant can be given in the present appeal is the reliance, which is being placed on two Supreme Court decisions rendered in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as well as the decision rendered in the case of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, .

6. The decisions under reference does take note of the fact that in case of a bachelor, deduction from compensation as living expenses should be to the extent of 50% instead of 1/3rd. Admittedly, the deceased was unmarried at the time of his death. The Tribunal had not taken this aspect of the matter into consideration while awarding or making deduction from the compensation amount despite the Apex Court''s pronouncement, which is required to be followed by High Courts as well as by Tribunals.

7. Counsel representing the claimants on the other hand has drawn the attention of this Court to a very recent decision, which is the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, . Attention of the Court has been drawn basically towards paragraphs 15 and 17 of the said decision.

8. Though in Santosh Devi''s case, the Hon''ble Supreme Court has taken note of the ratio of the decision rendered in Sarla Verma''s case (supra), especially the so-called last three lines of paragraph 24 of the said decision. But, the Court has not come out with any other formula, as such, which in any manner has the effect of diluting the decision of Sarla Verma''s case on the principle. The Hon''ble Court, however, in Santosh Devi''s case does go into the aspect that even in cases of non-organized sector, there should be some provisions for expected enhancement of income over a period of time, which has been worked out to the

extent of 30 per cent. But, so far as the deductions for personal expenses are concerned the Hon''ble Court has decided the Santosh Devi''s case on the given facts of that case. Therefore, in absence of any formula having been offered by the Hon''ble Supreme Court in Santosh Devi''s case, the earlier decision in the case of Sarla Devi with regard to deduction will have to be accepted as still the correct law occupying the field.

9. In view of the above, the appeal is allowed to the extent that deduction to the extent of 50 per cent as personal expenses of the deceased, being a bachelor will have to be allowed against the compensation amount, so decided by the Tribunal. However, the opinion or the decision of the Hon''ble Supreme Court given in the case of Santosh Devi also cannot be overlooked even in the present set of facts.

10. Since, it was an accepted position that the deceased was having an income of Rs. 3,000/- (three thousand) per month, though was not in permanent employment as such, but an expected rise in salary or emoluments over a period of time to the extent of 30 per cent cannot also be wished away.

11. Therefore, the appeal is allowed in part. The matter is remanded back to the Tribunal with a direction that the Tribunal will rework the compensation by first deducting 50 percent of the compensation as personal expenses in terms of the Sarla Verma''s judgment but shall also add 30 percent of the income of the deceased in view of the ratio of the decision rendered in Santosh Devi''s case. The Tribunal is directed to take a decision and rework the above quantum at the shortest possible time as the incidence relates to the year 2003 and the old dependant parents must get their rightful due in their favour, which must be done eight weeks from the date of production of a copy of this Order.

12. The Office is directed to return the original cords to the Tribunal immediately without any delay.

13. The statutory amount deposited by the Insurance Company in the High Court will now be remitted back to the Tribunal for payment to the claimants. It is clarified that on reworking of the compensation package, as directed by this Court, steps will be taken for release of the amount in favour of the claimants forthwith without any impediment.

