(2011) 01 CHH CK 0002

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 1235 of 2004

Dukhwaram Tandan and Others APPELLANT

Vs

Rabibahadur and Others RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 2 CGLJ 277

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Rajeev Gupta, C.J.—This is claimants'' appeal for enhancement of the compensation awarded by the Ninth Additional Motor Accident Claims Tribunal. Durg (for short ''the Tribunal'') vide award dated 17.09.2004, passed in Claim Case No. 230/2004.

2. As against the compensation of Rs. 28,00,000/- claimed by the Appellants/ claimants, unfortunate parents and younger brother of deceased Shiv Kumar, by filing a claim petition u/s 166 of the Motor Vehicles Act for his death in the motor accident on 27-09-1999, the Tribunal awarded a total sum of Rs. 1.32.000/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

3. The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Shiv Kumar died on account of the injuries sustained by him in the motor accident on 27.09.1999; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Truck bearing registration No. W.B.I 1/7387; as the above offending vehicle Truck on the dale of the accident was insured with the New India Insurance Company Limited and the Insurance Company could not establish any breach of the policy conditions, the Insurance Company was liable to pay compensation to the claimants.

4. As the Respondents have not filed any appeal against the award, the above

findings recorded by the Tribunal have now attained finality.

5. The Tribunal assessed the income of the deceased at Rs. 15,000/-per annum on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act. By deducting l/3rd of Rs. 15,000/-, towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of 13, the compensation was worked out to Rs. 1,30,000/-. By awarding further sum of Rs. 2,000/- towards funeral expenses, the Tribunal awarded a total sum of Rs. 1,32,000/- as compensation to the claimants for the death of deceased Shiv Kumar in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,32,000/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

6. Shri B.P. Singh, Shri V.K. Pandey and Shri Sameer Kujoor, learned Counsel for the Appellants submitted that the Tribunal has erred in not accepting the claimants'' evidence about the income of the deceased; and in awarding low compensation of Rs. 1,32,000/- only.

7. Shri Sudhir Agrawal and Shri P. Dutta, learned Counsel for Respondent No. 3 - The New India Insurance Company Limited, on the other hand, supported the award and contended that the compensation of Rs. 1,32,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now, we shall examine as to whether the compensation of Rs. 1,32,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

10. The claimants pleaded that deceased Shiv Kumar used to earn Rs. 2,500/- per month by working as Truck Driver. The fact that the deceased was working as Truck driver is ex facie established as at the time of the accident he was driving the other Truck bearing registration No. M.P. 24C/1578. In the year of accident i.e. 1999 the Truck drivers were usually getting salary of Rs. 2.500-3,000/- per month. The Tribunal, therefore, in our opinion, has fallen into error in holding that the claimants could not establish the income of the deceased as pleaded by them at Rs. 2,500/- per month. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 2,500/- per month and Rs. 30,000/- per annum.

11. Considering that deceased Shiv Kumar on the date of the accident was unmarried, we deem it proper to deduct 50% of the income of the deceased

towards his personal expenses, in view of the recent dictum of the Apex Court in the case of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, . The claimants'' dependency, therefore, is assessed at Rs. 15,000/-per annum.

12. As the claimants are parents of the deceased, the appropriate multiplier in the case would be 10 in view of the dictum of the Apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , wherein it was held that in those cases where the claimants are parents of the deceased, the multiplier should never exceed 10.

13. By multiplying the annual dependency of Rs. 15,000/- with the multiplier of 10, the compensation works out to Rs. 1,50,000/-. The claimants are further entitled to receive Rs. 5,000/- towards funeral expenses; and Rs. 5.000/- for loss of estate. The claimants, thus, become entitled to receive a total sum of Rs. 1,60.000/- as compensation for the death of deceased Shiv Kumar in the motor accident.

14. Learned Counsel for the parties submitted that with a view to avoid any possible dispute between the parties about the period for which the claimants are entitled to receive interest on the enhanced amount of compensation, the amount of interest on the enhanced amount of compensation may be quantified in this appeal itself.

15. Considering all the relevant aspects of the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs. 28,000/- at Rs. 3,000/-.

16. For the foregoing reasons, the appeal filed by the Appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,32,000/- awarded by the Tribunal is enhanced to Rs. 1,60,000/- with further quantified amount of interest of Rs. 3,000/- on the enhanced amount of compensation of Rs. 28,000/-.

17. Respondent No. 3 The New India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 31,000/- (Rs. 28,000/- towards enhanced amount of compensation + Rs. 3,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 28,000/-) before the concerning Claims Tribunal.

18. No order as to costs.

