

(2015) 01 CHH CK 0032
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 534 of 2003

Dulasia Bai and Others

APPELLANT

Vs

Shikari Uraon and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2015) 3 ACC 173 : (2015) 3 CGLJ 339

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Amiyakant Tiwari, for the Appellant

Final Decision : Allowed

Judgement

Goutam Bhaduri, J—This is the claimants appeal against the award dated 28th February, 2003, passed in Claim Case No. 03/2002, passed by the Chief Motor Accident Claims Tribunal, Raipur, whereby as against the claim of Rs. 4,67,000, an award of Rs. 1,72,000 was passed. Brief facts of the case are that on 18th October, 2001, a truck bearing registration No. O.R.-05D-8801, driven by the non-applicant No. 1, Shikari Uraon, dashed the deceased Tarachand, who was travelling on bicycle, whereby he sustained injuries and subsequently died. The non-applicant No. 2 was the owner of the offending vehicle and the vehicle was being insured with non-applicant No. 3, the Oriental Insurance Company.

2. The learned Tribunal after evaluating the evidence and documents on record and taking into account the income of the deceased to Rs. 15,000 per annum, has granted an award of Rs. 1,72,000 including the other compensation and the liability was fastened on the Insurance Company.

3. No appeal has been filed by the owner of the vehicle, therefore, finding arrived at by the learned Claims Tribunal with regard to the rash and negligent driving by respondent No. 1 is not under challenge, the same is affirmed.

4. Learned Counsel appearing on behalf of the appellants would submit that the

quantum of calculation has wrongly been assessed by the learned Claims Tribunal. He would further submit that the learned Court below has assumed the income of the deceased to be Rs. 15,000 per annum, whereas, the claimants, the wife has categorically stated that her husband, the deceased used to earn Rs. 3,000 per month, therefore, he prays to re-compute the same.

5. Per contra, learned Counsel appearing on behalf of the Insurance Company opposes the same and would submit that order passed by the Tribunal is well merited, which do not call for any interference.

6. I have heard the learned Counsel for the parties at length and perused the documents and evidence on record.

7. The claimant AW-1, Dulasiya Bai had stated that at the time of accident, the deceased was working as mason and was aged about 30 years and used to earn Rs. 3,000 per month. The witness was cross-examined on the issue and admitted that no documents to this effect was filed about income of Rs. 3,000 per month. This fact can be taken note of that the deceased belonged to the unorganized sector and it can be assumed that in unorganized sector, the income shall be documented. So it is very difficult for the persons like mason to prove the income by producing any documentary evidence, therefore, oral evidence with respect to income cannot be completely ignored.

8. In order to come to a finding of notional income, the reference is made to Section 163A of the Motor Vehicles Act. For the sake of brevity, Section 163A is reproduced hereinbelow:

"163A. Special provisions as to payment of compensation on structured formula basis--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time-to-time, amend the Second Schedule."

9. The above quoted Sub-section (3) of Section 163A of the Act mandate the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

10. As the Central Government has failed to amend the Second Schedule as provided in Sub-section (3) of Section 163A of the Act, the Courts/Tribunals can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

11. Now reverting to the present case, the accident in the present case is reported to have taken place in the year 2001, therefore, if the hike in price of essential commodities and cost of living during the period of 1994 and 2001 are taken into consideration the notional income, in the opinion of this Court, would certainly come to Rs. 30,000 per annum i.e. Rs. 2,500 per month.

12. Further the learned Claims Tribunal has only awarded an amount of Rs. 2,000 for funeral expenses, which appears to be too meager and the same is enhanced to Rs. 25,000. With respect to the loss of consortium, for loss of care and guidance for minor child, no award has been passed. Therefore, on my fair estimation, considering the evidence on record I further deem it proper to grant an amount of Rs. 25,000 for loss of consortium and Rs. 25,000 for care and guidance for minor child.

13. Further reading of the award would reveal that the Tribunal has not taken into account the future prospects. Therefore, taking into account the law laid down by the Hon'ble Supreme Court in *Rajesh and Others Vs. Rajbir Singh and Others*, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , and the fact that the deceased was a self employed and was below 40 years. I deem it appropriate to make 50% addition of the actual income of the deceased while computing the future prospects and thus the monthly income of the deceased is estimated to Rs. 2,500 + Rs. 1,250 = 3,750. Thus, applying the principles laid down in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , case, the multiplier of 16 is applied. Thus the compensation is reassessed as follows:

14. After deducting Rs. 1,72,000 awarded by the Tribunal, the enhancement would be Rs. 3,83,000. In the result, the appeal is allowed. The total compensation of Rs. 1,72,000 awarded by the Tribunal is enhanced to Rs. 5,55,000. The claimants will be entitled to Rs. 3,83,000 in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of filing of the petition till realization.