(2024) 03 CHH CK 0053

In the Chhattisgarh High Court

Case No : MAC No. 1361 Of 2017

Fuleshwari Tamrakar APPELLANT

Vs

Varun Kumar Sinha Constable No. 1601 RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Chhattisgarh State Ex-Gratia Compensation Payment for Officials/Employees died or injured during Electioneering Duty, Rules, 2009 — Rule 8
Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304A, 337, 338

Citation : (2024) 03 CHH CK 0053

Hon'ble Judges : Sachin Singh Rajput, J

Bench : Single Bench

Advocate : Resham Lal Jaiswal, Kanhaiya Yadav, Ajit Singh

Final Decision : Partly Allowed

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short MV Act) is against the impugned award dated 27.10.2016 passed by the Additional Motor Accident Claims Tribunal, Rajnandgaon, CG (for short ?the Tribunal?) in Claim Case No. 212/2014. By the impugned award, against a claim of Rs. 24,10,000/-, learned Tribunal has awarded the total compensation of Rs. 14,53,650/- in favour of the appellants / claimants on account of accidental death of Ramdas. The said accident occurred on 15.04.2014 on account of rash and negligent driving of the offending vehicle (Land Mine Vehicle) bearing registration No. C.G. 03/3190, by respondent No. 1. The offending vehicle was owned by respondent No. 2 / State of Chhattisgarh.

2. Since an amount of Rs. 10,20,000/- was paid by the police department / State of Chhattisgarh as ex gratia amount to the appellants / claimants, learned Tribunal while awarding the compensation deducted the same. It is worthwhile to mention here that learned Tribunal had initially quantified the compensation at Rs. 14,53,650/- but eventually after deducting the ex gratia amount of

10,00,000/- and Rs. 20,000/- for funeral expenses (total Rs. 10,20,000) arrived at the compensation payable to the claimants at Rs. 4,33,650/- (Rs. 4,38,650 mentioned wrongly in the impugned order).

3. As per the pleadings made in the claim application, the deceased was an Assistant Constable in the Police Department and at the relevant time he was discharging his duties in the land Mines Vehicle (for short ?LMV?) for security purposes. When the police force including the deceased were going to Kahadabri from Maanpur, near a school in village Eragoan the offending vehicle turned turtle on account of the rash and negligent driving of its driver. As a result of the said accident, Ramdas suffered grievous injuries on his head and chest which eventually proved fatal to him leading to his on-the-spot death. Crime No. 36/14 for the offence under Section 279, 337, 338 and 304-A of IPC was registered against the driver of the offending vehicle. It is pleaded in the claim application that the deceased at the relevant time was aged about 40 years and was earning Rs. 8,500/- per month. The appellants/ claimants herein are said to have been fully dependent on the income of the deceased.

4. The respondent No. 1 / driver filed his written statement and denied the claim averments. He however has stated that he being an employee of the police department was driving the offending vehicle as per the instructions given by the department, and that on the date of accident also he was taking the employees deputed for election duty. He has further stated that at the relevant time the vehicle was being driven very slowly but as some anti social elements had dug a pit and then erected stone slabs about two feet above the earth surface and as those stones slabs could not be visible from ones naked eye, the offending vehicle met with the unfortunate accident. He has pleaded that as the appellants have already been paid an ex gratia amount of Rs. 10,00,000/- and Rs. 20,000/- towards funeral expenses by the State Government, they are not entitled for any further compensation, and thus pleaded dismissal of the claim application.

5. Respondent No. 2 / owner also filed its written statement and denied all the claim averments. He has made almost the same plea as has been made by respondent No. 1, and eventually requested for dismissal of the claim.

6. On the basis of pleadings of the respective parties, learned Tribunal framed the issues and decided the same in favour of the appellants / claimants, assessing the compensation as detailed above but after making deduction of the ex gratia amount of Rs. 10,00,000/- and Rs. 20,000/- paid for funeral expenses, by the State Government.

7. Learned counsel for the appellants / claimants submits that the learned Tribunal has considered the monthly salary of the deceased at Rs. 8,243/- which is not proper; that the future prospect has also not been considered; that Tribunal has also fallen in error in deducting the ex gratia amount of Rs. 10,00,000/- and Rs. 20,000/- paid for funeral expenses by the State Government, which is not permissible in law.

8. Learned counsel for the State/respondent No. 2 supports the award and submits that the learned Tribunal has rightly deducted the ex gratia amount which has been paid by the State. He placed reliance upon the judgment of Hon?ble Supreme Court in case of Krishna & Ors. Vs. Tek Chand & Ors. In SLP (C) No. 5044 of 2019 passed in 05.02.2024.

9. I have heard learned counsel for the parties, considered their rival submissions and perused the record.

10. The first issue to be decided in this case is as to what should be just compensation to be awarded to the appellants / claimants. As per the pleadings of the claim application, the monthly income is shown to be Rs. 8,500/-. Phuleshwari (AW-1) has stated that her husband (deceased) was an Assistant Constable in the police department and was earning Rs. 8,500/- per month. Ex. P-9 is the salary slip of the deceased for the month of March, 2014 according to which, the monthly salary of the deceased was Rs. 8,243/-. The learned Tribunal assessed the monthly income of the deceased at Rs. 7,450/- which appears to be incorrect. In view of the evidence on record, particularly the salary slip (Ex. P-9), this Court assesses the monthly income of the deceased at Rs. 8,243/-. Thus, taking guidance from the decisions of the Hon'ble Supreme Court in Smt. Sarla Verma and others VS. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and National Insurance Co. Ltd. Vs. Pranay Sethi reported in (2017) 16 SCC 680 and Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors; (2018) 18 SCC 130, this Court computes the compensation in the following manner:-

S. No.

Description

Amount

1.

Monthly income

8243/-

2.

30% Future prospect

2473/-

3.

Total Monthly Income (8243+2473)

10,716/-

4.

Total Yearly Income (10716x12)

1,28,592/-

5.

1/4 Deduction for personal expenses of deceased

32,148/-

6.

Net income

96,414/-

7.

Multiplier of 15 applied to assess total loss of dependency

14,46,210/-

8.

Funeral Expenses

15,000/-

9.

Loss of estate

15,000/-

10.

Spousal consortium

40,000/-

11.

Parental and filial consortium

1,60,000/-(Rs.

40000/- each)

Total compensation

16,76,210/-

11. For the forgoing reasons, the appeal is allowed in part. The amount of compensation of Rs. 4,33,650/- awarded by learned tribunal is enhanced to Rs. 16,76,210/-. Hence, after deducting the amount of Rs. 4,33,650/-, the claimants are held entitled for an additional amount of Rs. 12,42,560/-.

12. Now, the second question which requires determination by this Court is as to

whether the amount of ex gratia can be deducted from the amount of compensation. The ex gratia amount of Rs. 10,00,000/-was paid to the appellants as per provisions contained in Chhattisgarh State Ex-Gratia Compensation Payment for Officials/Employees died or injured during Electioneering Duty, Rules, 2009 (for short ?Rules of 2009?) and therefore the award may be suitably enhanced.

13. Relevant portion of the Rule referred to above is being reproduced below for ready reference:

4. Amount of Ex-Gratia Compensation.

(a) In case of death of officers/ employees Ex-Gratia compensation payment shall be of Rs. 5,00,000 (Five Lac) which will be paid to the family members of the deceased. The compensation amount shall be Rs. 10,00,000 (Ten Lac) if death is caused due to Naxalite violence or violence of similar nature and will be paid to the family members of the deceased.

(b) If permanent disability is caused due to any accident to the officers/ employees engaged in election duty an amount of Rs. 3,00,000 (Three Lac) shall be paid as ex-gratia compensation payment. If permanent disability is caused due to Naxalite Violence or incident of similar nature an amount of Rs. 6,00,000 (Six Lac) shall be paid to the officers/employees as ex-gratia compensation payment. (c) Temporary Disability - If partial disability is caused to the officers/ employees during electioneering duty an amount of Rs. 1,00,000 (One Lac) shall be paid as ex-gratia compensation payment. If such partial disability is caused due to Naxalite Violence or incident of similar nature an amount of Rs. 2,00,000 (Two Lac) shall be paid as ex-gratia compensation payment.

14. This apart, Rule 8 of Rules of 2009 indicates that the ex gratia compensation paid under Rules 2009 shall be in addition, and not in derogation of any payment of compensation made under any other Scheme or Act. For ready reference Rule 8 is quoted below:

8. Medical evidence and additional compensation.

(i) Permanent and partial disability shall be decided on the basis of medical evidence available on the record. (ii) Ex-gratia compensation payment under these rules shall be in addition to and not in derogation of any other payment of the compensation made under any other scheme or Act.

15. From perusal of these provisions it is apparent that the ex gratia compensation paid to the appellants is in addition to any amount of compensation which has been paid to the appellants / claimants under any Scheme or Act. In this case, the application has been filed by the appellants / claimants under Section 166 of the MV Act which provides for grant of compensation to the legal representatives of the deceased or the injured as the case may be on account of death or injuries sustained in a motor accident and therefore, it can be safely presumed that the compensation which has been

awarded under the MV Act, is distinguishable from the ex gratia amount which has been paid under the Rules of 2009. Rule 8 of Rules of 2009 makes it abundantly clear that such ex gratia amount cannot be in derogation of any other compensation.

16. Dealing with an identical issue, the Bombay High Court in the case of Reliance General Insurance Co. Ltd. Vs. Manjula Kabiraj Das and Ors. reported in (2023) 2 RCR (Civil) 796 as held as under:

?9. In respect of issue ex-gratia amount. The dictionary meaning of ex-gratia payment is a payment not legally required. An ex-gratia payment is considered voluntary. The ex-gratia, means by ?favour?. It is an payment, made to an individual by an organization, government or insurer for damages or claims but is does not require the admittance of liability by the party making the payment. In my view, the ex-gratia amount is different from the compensation awarded under the MV Act. The ex-gratial payment is voluntary, whereas compensation under MV Act is mandatory on the basis of liability or contractual liability. Hence, I doe not see merit in contention of learned counsel for the appellant, that an ex-gratia is received by the claimants, they are not entitled for compensation.?

17. The cumulative view taken by the Bombay High Court also fortifies the fact that the ex gratia amount cannot be made adjustable either way simply for the reason that it is a payment made to an individual by an organization, government or insurer as the case may be, just as a favour, and it is not at all a legal requirement. In the case in hand, Ramdas died in a motor accident and the appellants were paid ex gratia amount in view of Rules 2009, therefore, learned Tribunal committed a manifest error in deducting ex gratia amount from the compensation assessed by it. The case law which has been relied upon by the State counsel would not help the respondent No. 2 for the reason that the statutory Rule referred to above clearly provides for the ex gratia amount to be in addition to any other compensation which the appellants / claimants are entitled to get under any Scheme or Act. Furthermore, the ex gratia amount is always a voluntary gesture as a favour made by the State or any other organization.

18. Thus having traversed through the factual and legal scenario as above, the finding recorded by learned Tribunal for deduction of the ex gratia amount paid by the concerned department of the State Government does not stand to the judicial scrutiny. Since learned Tribunal has already awarded a sum of Rs. 4,33,650/-, the enhanced amount which the appellants are now entitled to get comes to Rs. 12,42,560/-. This additional amount shall carry interest @ 6% per annum from the date of appeal i.e. 22.09.2017. Order accordingly. The impugned award thus stands modified to the extent indicated above.

19. The additional amount of compensation shall be paid by the State within a period of 60 days. After deposit Rs. 2,00,000/- (each) shall be invested in fixed deposit in the name of appellant Nos. 4 & 5 in a nationalized bank till they attain

majority; Rs. 2,00,000/- (each) shall be invested in fixed deposit in the name of appellant Nos. 2 & 3 in a nationalized bank for a period of two years, and Rs. 4,00,000/- shall be invested in fixed deposit in the name of appellant No. 1 in a nationalized bank for a period of two years. Remaining amount shall be paid to appellant No. 1 through bank transaction.

20. Accordingly, the appeal is allowed in part.

