(2008) 02 CHH CK 0046

In the Chhattisgarh High Court

Case No : M.A. No. 928 of 2004

Indu Sahu and Others APPELLANT

Vs

Bhagwan Prasad Sharma and Others RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) 3 MPJR 13

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 Additional Member Motor Accident Claims Tribunal, Dhamtari (for short "the Tribunal") vide award dated 07.04.2004, passed in Claim Case No. 01/2003.

The claimants, unfortunate widow, minor children and parent of deceased Umesh Sahu claimed compensation of Rs.23,65,000/- by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 31.05.2003, when the motorcyle on which he was travelling was dashed by the offending vehicle Jeep bearing registration No. C.G. 07 ZC 1107, resulting in his instantaneous death on the spot itself. The claimants further pleaded that deceased Umesh Sahu who was aged about 26 years used to earn Rs.4,500/- per month from his Auto Center.

The owner and driver of the offending vehicle Jeep did not contest the claim and were proceeded ex parte before the Tribunal.

The Insurer of the offending vehicle Jeep contested the claim and denied its liability to pay compensation to the claimants on the plea that the Jeep was being plied in breach of the policy conditions and the driver of the Jeep was not holding a valid driving licence.

The claimants examined AW1 Indu Sahu in support of their claim, whereas the insurer of the offending vehicle Jeep did not examine any witness in rebuttal.

The Tribunal on a close scrutiny of the evidence led before it held that deceased Umesh Sahu died on account of the injuries sustained by him in the motor accident on 31.05.2003; the accident occurred due to rash and negligent driving of the driver of the driver of the offending vehicle Jeep; as the offending vehicle Jeep on the date of the accident was insured with the New India Insurance Company Limited, the Insurance Company was liable to pay compensation to the claimants.

The Tribunal assessed the income of the deceased at Rs.2,080/- per month. By deducting a sum of Rs.600/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 1,480/- per month and Rs.17,760/- per annum. By multiplying the annual dependency of Rs.17,760/- with the multiplier of 9, the compensation was worked out to Rs.1,59,840/-. By awarding further sum of Rs.10,000/- under other permissible heads, the Tribunal awarded a total sum of Rs.1,69,840/- as compensation to the claimants for the death of deceased Umesh Sahu in the mother accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs.1,69,840/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

Shri Sunil Sahu, 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 assessing his income at Rs.2,080/- per month only; in selecting the lower multiplier of 9; and in awarding low compensation of Rs.1,69,840/-only.

Shri Prashant Jayaswal, learned Senior 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.1,69,840/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

Shri F.S. Khare, learned counsel for respondent No. 1, the driver of the offending vehicle Jeep also supported the award.

The findings recorded by the Tribunal that deceased Umesh Sahu died on account of the injuries sustained by him in the motor accident on 31.05.2003; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Jeep; and the insurer of the offending vehicle Jeep was liable to pay compensation to the claimants have now attained finality as the respondents have not filed any appeal against the award. That apart, these findings are not under challenge before us in this appeal and even otherwise there is sufficient evidence available on record to establish the above facts beyond any shadow of doubt. We, therefore, affirm the above findings recorded by the Tribunal in that behalf.

True, the claimants pleaded that deceased Umesh Sahu used to earn Rs.4,500/-

per month from his Auto Center, but the evidence led by the claimants in that behalf was not of clinching nature. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the claimants'' evidence about the income of the deceased.

Nevertheless, the income of the deceased assessed by the Tribunal at Rs.2,080/- per month is certainly on the lower side. The Tribunal while discarding the evidence of the claimants about the income of the deceased ought to have assessed his income on the basis of the notional income prescribed in the Second Schedule u/s 163A of the Motor Vehicles Act.

The notional income of Rs. 15,000/- was prescribed in the Second Schedule u/s 163A of the Motor Vehicles Act in the year 1994. If we take into consideration the increase in the prices of the essential commodities and the cost of living during the period between 1994 and 2003, the year of the accident in the present case, the notional income of Rs. 15,000/-prescribed in the Second Schedule in the year 1994 would certainly come to Rs.30,000/- in the year 2003. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs.30,000/- per annum.

By deducting 1/3rd of Rs.30,000/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs.20,000/- per annum.

Considering that deceased Umesh Sahu was aged about 26 years and his widow claimant No. 1 Indu Sahu was 23 years of age on the date of the accident, we are of the opinion that multiplier of 14 would be appropriate in the present case.

By multiplying the annual dependency of Rs.20,000/- with multiplier of 14, the compensation works out to Rs.2,80,000/-. By awarding further sum of Rs.5,000/- towards funeral expenses; Rs.5,000/- for loss of the consortium to the widow; and Rs.5,000/- for loss of estate, the claimants become entitled to receive a total sum of Rs.2,95,000/- as compensation for the death of deceased Umesh Sahu in the motor accident.

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 get interest on the enhanced amount of compensation, the amount of interest on the enhanced amount of compensation may be quantified in this appeal itself.

Considering all the relevant factors including the delay in the disposal of the claim petition and the present appeal and the fact that the Insurance Company alone is not be blamed for the delay in the matter, we quantity the amount of interest payable on the enhanced amount of compensation of Rs.1,25,160/- at Rs.24,840/-.

For the foregoing reasons, the appeal filed by the appellants/ claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,69,840/- awarded by the Tribunal is enhanced to Rs.2,95,000/- with further quantified amount of interest of Rs.24,840/- on the enhanced amount of compensation.

Respondent No. 3 The New India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 1,50,000/-[Rs.1,25,160/- towards the enhanced amount of compensation + Rs.24,840/-towards the quantified amount of interest on the enhanced amount of compensation] before the concerning Claims Tribunal.

No order as to costs.

