(2011) 05 CHH CK 0013

In the Chhattisgarh High Court

Case No : Misc. Appeal C. No 143 of 2008

Jageshwar Sahu and Smt. Subhashini Sahu APPELLANT

Vs

Ghasiram Chouhan and Others RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166
Workmens Compensation Act, 1923 — Section 163(3)

Citation : (2011) 3 CGLJ 562

Hon'ble Judges : Rajeev Gupta, C.J;N.K. Agarwal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Rajeev Gupta, C.J.—The unfortunate parents of deceased Mukesh Kumar Sahu are the Appellants before us in this appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Mahasamund (for short `the Tribunal'') vide award dated 30.10.2006, passed in Claim Case No. 19/2006.

2. As against the compensation of Rs. 14,00,000/-, claimed by the Appellants/ claimants, unfortunate parents of deceased Mukesh Kumar Sahu by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 28.10.2005, the Tribunal awarded a total sum of Rs. 1,22,000/- as compensation along with interest @ 6% per annum from the date of the 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 claimants'' son Mukesh Kumar Sahu died on account of the injuries sustained by him in the motor accident on 28.10.2005; the accident occurred due to rash and negligent driving of the driver of the offending vehicle minibus bearing registration No. CG-06 A-8286; as the above offending vehicle minibus on the date 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 the 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 163A of the Motor Vehicle Act. By deducting 1/3rd 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 12, the compensation was worked out to Rs. 1,20,000/-. By awarding further sum of Rs. 2,000/- towards funeral expenses, the Tribunal awarded a total sum of Rs. 1,22,000/- as compensation to the claimants for the death of their son Mukesh Kumar Sahu in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,22,000/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

6. Shri Dharmesh Shrivastava, learned Counsel for the Appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 15,000/- per annum only; in selecting the lower multiplier of 12; and in awarding low compensation of Rs. 1,22,000/- only.

7. Shri Raj Awasthi, learned Counsel for Respondent No. 3, the New India Insurance Company Limited, the insurer of the offending vehicle minibus, on the other hand supported the award and contended that as deceased Mukesh Kumar Sahu was not having any independent income on the date of the accident, the compensation of Rs. 1,22,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

8. Shri Mukesh Sharma and Shri Shailendra Sharma, learned Counsel for Respondents No. 4, 5 and 6, the driver, owner and insurer of the other vehicle trailor also supported the award.

9. 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.

10. Now, we shall examine as to whether the compensation of Rs. 1,22,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

11. The claimants'' son deceased Mukesh Kumar Sahu was aged about 18-19 years on the date of the accident. He was a student of 12th standard. As there was neither any pleading nor any evidence led by the claimants about the income of the deceased, the compensation is required to be assessed on the basis of the notional income of the deceased.

12. In the Second Schedule u/s 163A of the Motor Vehicle Act, the notional income of Rs. 15,000/-was prescribed in the Second Schedule in the year 1994.

13. Section 163A of the Act where-under the Second Schedule was introduced in the year 1994 reads as follows:

[163 A. 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. Explanation - For the purposes of this Sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923).

(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.

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

15. As the Central Government has failed in amending the Second Schedule as provided in Sub - Section (3) of Section 163A of the Act, the Courts /Tribunal 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.

16. Now, reverting to the present case, the unfortunate accident wherein the claimants'' son Mukesh Kumar Sahu lost his life took place in the year 2005. If the increase in the prices of essential commodities and the cost of living between the year 1994 and 2005 are taken into consideration, the notional income of Rs. 15,000/- prescribed in the Second Schedule in the year 1994 would certainly come to Rs. 36,000/-in the year 2005. We, therefore, propose to re-compute the compensation taking the notional income of the deceased at Rs. 36,000/- per annum.

17. As the deceased was unmarried on the date of the accident and the claimants are parents of the deceased, we deem it proper to deduct 50% of Rs. 36,000/- towards the personal expenses of the deceased in view of the dicta of the Apex Court in the cases of Syed Basheer Ahamed and Ors. v. Mohammed Jameel and Anr. reported in (2009) 2 SCC 225 and Sarla Verma (Smt) and Ors.

v. Delhi Transport Corporation and Anr. reported in (2009) 6 SCC 121. The claimants'' dependency, therefore, is assessed at Rs. 18,000/- per annum by deducting 50% of Rs. 36,000/- towards the personal expenses of the deceased.

18. Considering that the claimants are parents of the deceased, multiplier of 10, in our opinion, would be appropriate in the present case 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, .

19. By multiplying the annual dependency of Rs. 18,000/- with the multiplier of 10, the compensation works out to Rs. 1,80,000/-. 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. 1,90,000/- as compensation for the death of their son deceased Mukesh Kumar Sahu in the motor accident.

20. Learned Counsel for the parties submitted that with a view to avoid any possible dispute between the parties before the Tribunal 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.

21. Considering all the relevant aspects of the matter, including the delay in disposal of the claim petition and the present appeal, and the fact that the Insurance Company alone is not to be blamed for the entire delay in the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs. 68,000/- at Rs. 7,000/-.

22. For the foregoing reasons, the appeal filed by the Appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,22,000/- awarded by the Tribunal is enhanced to Rs. 1,90,000/- with further quantified amount of interest of Rs. 7,000/- on the enhanced amount of compensation of Rs. 68,000/-.

23. Respondent No. 3 the New India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 75,000/- (Rs. 68,000/- towards enhanced amount of compensation + Rs. 7,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 68,000/-) before the concerning Claims Tribunal.

24. No order as to costs.