(2008) 07 CHH CK 0012

In the Chhattisgarh High Court

Case No : M.A. No. 794 of 2002

Janki Bai (Smt.) and Others APPELLANT

Vs

Paras Ram Sanu and Others RESPONDENT

Date of Decision : 22-07-2008

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

Citation : (2009) 2 MPJR 12

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 Motor Accident Claims Tribunal (for short, ''the Tribunal''), Dhamtari, District - Raipur, vide award dated 03.07.2002, passed in Claim Case No. 2/2002.

The claimants, unfortunate widow, minor daughter and parent of deceased - Pardesi Ram, claimed compensation of Rs. 13,29,000/- for his death in the motor accident, when his bicycle was dashed by the offending vehicle - Metador bearing registration No. MP 23 DA 8340, resulting in his instantaneous death on the spot itself. The claimants further pleaded that deceased - Pardesi Ram used to earn Rs. 200/- per day by selling vegetables and as a carpenter.

The driver, owner and insurer of the offending vehicle - Metador contested the claim and denied their liability to pay compensation to the claimants on the plea that the deceased himself was responsible for the accident. The Insurer of the metador took the plea that driver of the offending vehicle - Metador was not holding a valid driving license and the metador was being plied in breach of the policy conditions.

The claimants examined AW/1 - Janki Bai & AW/2 - Vishram in support of their case, whereas, the driver, owner and insurer of the affending vehicle - Metador did not examine any witness in rebuttal.

The tribunal on a close scrutiny of the evidence led before it held that deceased - Paradesi Ram died on account of the injuries sustained by him in the motor accident on 08.05.2001; the accident occurred due to rash and negligent driving of the driver of the offending vehicle - Matador; as the offending vehicle - Metador on the date of the accident was insured with 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. 1,300/- per month. By deducting a sum of Rs. 400/- towards personal expenses of the deceased, the claimants dependency was assessed at Rs. 900/- per month and Rs. 10,800/- per annum. By multiplying the annual dependency of Rs. 10,800/- with the multiplier or 10, the compensation was worked out to Rs. 1,08,000/-. By awarding further sum of Rs. 10,000/- under other permissible heads, the Tribunal awarded a total sum of Rs. 1,18,000/- as compensation to the claimants for the death of deceased - Pardesi Ram in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,18,000/- @ 9% per annum from the date of filing of the claim petition till the date or actual payment.

Smt. Indira Tripatni. learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants evidence about the income of the deceased; in assessing his income at Rs. 1,300/- per month only; in selecting lower multiplier of 10; and in awarding low compensation of Rs. 1,18,000/- only.

Shri Prashant Jayaswal, learned Senior Counsel for respondent No. 3 - Insurance Company on the other hand supported the award and contended that the compensation of Rs. 1,18,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

As the respondents have not filed any appeal against the award, the findings recorded by the Tribunal that deceased - Pardesi Ram died on account of the injuries sustained by him in the motor accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle - Metador; and the insurer of the matador was liable to pay compensation to the claimants, have now attended finality. That apart, these findings are not under challenge before us in this appeal. We therefore, affirm the findings recorded by the Tribunal in that behalf.

The claimants pleaded that deceased - Pardesi Ram used to earn Rs. 200/- per day by selling vegetables and working as a carpenter. True, 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 Tribunal in the event of discarding the claimants evidence about the income of the deceased, ought to have assessed the income of the deceased 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/- in the Second Schedule u/s 163A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case wherein deceased - Pardesi Ram lost his life took place in the year 2001. If the increase in the prices of essential commodities and the cost of living during the period between 1994 and 2001 is taken into consideration, the notional income of Rs. 15,000/- prescribed in the Second Schedule in the year 1994 would come to Rs. 30,000/- in the year 2001. We, therefore, propose to re-compute the compensation by taking the income of the deceased at Rs. 30,000/- per annum. By deducting 1/3 of Rs. 30,000/- towards personal expresses of, the deceased, the claimants'' dependency is assessed at Rs. 20,000/- per annum.

Deceased - Pardesi Ram was 32 years of age on the date of the accident, whereas his widow - Janki Bai was shown to be 28 years of age in the claim petition. In view of the recent dictum of the Apex Court in the case of New India Assurance Company Limited Vs Kalpana and others reported in 2007 ACJ 825`, we are of the opinion that multiplier of 13 would be appropriate in the present case.

By multiplying the annual dependency of Rs. 20,000/- with the multipler of 13, the compensation works out to Rs. 2,60,000/-. The claimants are further entitled to get Rs. 5000/- towards funeral expenses; Rs. 5,000/- for loss of estate and Rs. 5,000/- for loss of consortium to the widow. The claimants, thus become entitled to receive a total sum of Rs. 2,75,000/- as compensation for the death of deceased - Pardesi Ram in the motor accident.

The claimants shall also be entitled to get interest @ 6% per annum on the enhanced amount of compensation of Rs. 1,57,000/- from the date of filing of the claim petition till the date of actual payment.

For the foregoing reasons, the appeal filed by the appellants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,18,000/- awarded by the Tribunal is enhanced to Rs. 2,75,000/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

Respondent No. 3 - Insurance Company is granted three month''s time for depositing the enhanced amount of compensation along with the amount of interest due thereon before the concerning Claims Tribunal.

No order as to costs.

