(2012) 09 CHH CK 0033

In the Chhattisgarh High Court

Case No : M.A.C. No. 267 of 2007

Jeevan Lal Kurre APPELLANT

Vs

Vinod Kumar Khelwar and Others RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2012) 4 CGBCLJ 353

Hon'ble Judges : Rajeev Gupta, C.J;Rangnath Chandrakar, J

Bench : Full Bench

Advocate : R.S. Patel and Ms. Mamta Sinha, for the Appellant; C.K. Sahu, for Resp. Nos. 1 and 2 and Shri Dashrath Gupta, for Resp. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—This is claimant''s appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Raipur (for short ''the Tribunal'') vide award dated 25.09.2006, passed in Claim Case No. 59/2006. As against the compensation of Rs. 7,00,000/- claimed by the appellant/ claimant, unfortunate son of deceased Sant Ram Kurre, by filing a claim petition u/s 166 of "the Motor Vehicles Act, for his death on 20.03.2006 on account of the injuries sustained by him in the motor accident on 18.03.2006, the Tribunal awarded a total sum of Rs. 75,000/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

2. The Tribunal on a close scrutiny of the entire evidence led before it held that the claimant''s father Sant Ram Kurre died on 20.03.2006 on account of the injuries sustained by him in the motor accident on 18.03.2006; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Tata Spacio Jeep bearing registration No. CG-04/T-0904; as the above offending vehicle Tata Spacio Jeep, 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 compensation to the claimant.

3. As the insurer of the above offending vehicle Tata Spacio Jeep has not filed any appeal against the impugned award challenging the above findings recorded by the Tribunal, the same, now, have attained finality.

4. The Tribunal assessed the income of the deceased at Rs. 15,0007- per annum on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act. By deducting l/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 6, the compensation was worked out to Rs. 60,000/-. By awarding further sum of Rs. 15,000/- under other heads, the Tribunal awarded a total sum of Rs. 75,000/- as compensation to the claimant for the death of his father Sant Ram Kurre in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 75,000/- @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

5. Shri RS Patel and Ms Mamta Sinha, learned counsel for the appellant submitted that the Tribunal has erred in not accepting the claimant''s evidence about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only; in selecting the lower multiplier of 6; and in awarding low compensation of Rs. 75,000/- only.

6. Shri Dashrath Gupta, learned counsel for respondent No. 3, the New India Insurance Company Limited, the insurer of the offending vehicle Tata Spacio Jeep, on the other hand, supported the award and contended that as the claimant could not establish the income of the deceased as pleaded by him, the compensation of Rs. 75.000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

7. Shri CK Sahu, learned counsel for respondents No. 1 Vinod Kumar Khelwar and No. 2 Roopesh Kumar, the driver and owner of the offending vehicle Tata Spacio Jeep also supported the award.

8. 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.

9. Now we shall examine as to whether the compensation of Rs. 75,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

10. True, the claimant pleaded that his father deceased Sant Ram Kurre used to earn Rs. 3,000/- per month by selling vegetables in the village, no cogent and reliable evidence was led before the Tribunal for establishing the above

occupation of the deceased and his income to the extent of Rs. 3,000/- per month. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the claimant''s evidence about the income of the deceased.

11. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 15,000/- per annum in the year 2006 is certainly on the lower side and requires reconsideration.

12. Considering that deceased Sant Ram Kurre was aged about 60 years on the date of the accident, we are of the opinion that he could have easily earned Rs. 65-70/- per day even by working as an unskilled labour, in the year 2006. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 2,000/- per month and Rs. 24,000/- per annum.

13. As there were only two members in the family of the deceased i.e. deceased Sant Ram Kurre himself and the sole claimant in the case, his son Jeevan Lai Kurre, who himself had his own independent income as labour, we deem it proper to deduct 50% of the income of the deceased towards his personal expenses. The claimant''s dependency, therefore, is assessed at Rs. 12,000/- per annum by deducting 50% of Rs. 24,000/- towards the personal expenses of the deceased.

14. Deceased Sant Ram Kurre was shown to be 60 years of age in the claim petition as well as in his postmortem report. The dictum of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, prescribes the multiplier of 9 for the age group between 56-60 years. The Tribunal, therefore, has erred in selecting the lower multiplier of 6.

15. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of 9, the compensation works out to Rs. 1,08,000/-. The claimant is further entitled to receive Rs. 5,000/- towards funeral expenses; and Rs. 5,000/- for loss of estate. The claimant, thus, becomes entitled to receive a total sum of Rs. 1,18,000/- as compensation for the death of his father Sant Ram Kurre in the motor accident.

16. The claimant is awarded further sum of Rs. 7,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 43,000/-

17. For the foregoing reasons, the appeal filed by the appellant/claimant for enhancement of the compensation is allowed in part. The compensation of Rs. 75,000/- awarded by the Tribunal is enhanced to Rs. 1,18,000/- with further quantified amount of interest of Rs. 7,000/- on the enhanced amount of compensation of Rs. 43,000/-.

18. Respondent No. 3 the New India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 50,000/- (Rupees fifty thousand only) (Rs. 43,000/- towards enhanced amount of compensation + Rs. 7,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 43,000/-) before the concerning Claims Tribunal. No order as to costs.