
(2014) 01 CHH CK 0038
In the Chhattisgarh High Court
Case No : Miscellaneous Appeal No. 66 of 2000

Kalam Bai

APPELLANT

Vs

Gautam Nirmalkar

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 192(1), 201(1-A)
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2014) 3 CGLJ 398

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Amiyakant Tiwari, Advocate for the Appellant; G.V. Krishna Rao, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J.

1. Invoking the appellate jurisdiction of this Court u/s 173 of the Motor Vehicle Act, 1988, (for short "the M.V. Act") appellants/claimants have challenged the award dated 27/07/2000 passed by 5th Additional Motor Accident. Claims Tribunal, Durg (for short "Claims Tribunal") in Claim Case No. 77/1999. The facts, briefly stated are as under:--

1.1 Appellants/claimants, being the wife and children of deceased-Ram Prasad Verma filed claim case No. 77/1999 u/s 166 of the M.V. Act, seeking compensation stating inter alia that on the date of accident i.e. on 24/03/1999, Ram Prasad Verma was going from Supela to Power House in his Scooter bearing registration No. MP-24/D/4570. On the way, a Truck bearing registration No. MP-24/C/213.0, driven by respondent/driver- Gautam Nirmalkar rashly and negligently, came from opposite side, dashed the Scooter of Ram Prasad Verma. The said Truck was owned by respondent/owner-Santosh Kumar Pandey and insured with respondent/insurer- National Insurance Company. On account of said dash/hit, Ram Prasad Verma fell down from his Scooter, he sustained

grievous injuries and thereafter died. At the time of accident, deceased was aged about 40 years and was earning Rs. 8,000 per month as working in Bhilai Steel Plant. Appellants/claimants claimed compensation to the extent of Rs. 10,63,500 to the respondents jointly & severally.

1.2 Respondents No. 1 & 2 filed their joint written statement stating inter alia that on the date of accident, Truck was duly insured with the Insurance Company, therefore, Insurance Company is liable to make payment of compensation. Respondent No. 3/Insurance Company filed his separate written statement stating inter alia that on the date of accident, vehicle was being plied in violation of terms of policy of insurance, therefore, Insurance Company is not liable to make payment of compensation.

1.3 On close scrutiny of the material available on record, the Claims Tribunal held that on the date of accident, deceased was aged about 40 years and earning Rs. 5,000 per month i.e. Rs. 60,000 per annum. After deducting 1/3rd towards his personal and living expenses, dependency of claimants taken as Rs. 40,000 and by applying the multiplier of 15, annual dependency of claimants taken as Rs. 6,00,000. In addition, Rs. 20,000 towards loss of consortium and loss of love & affection, Rs. 2,000 towards funeral expenses and Rs. 2,500 towards loss of estate were also awarded. Thus, appellants are entitled for total compensation of Rs. 6,24,500 with 12% interest.

2. Mr. Amiyakant Tiwari, learned counsel appearing for the appellants/claimants would submit that the deceased was working in Bhilai Steel Plant and earning Rs. 8996.43 per month, which was proved by Salary Slip of deceased-Ram Prasad Verma vide Exhibit- P/7, but the learned Claims Tribunal has assessed the monthly income of the deceased- Ram Prasad Verma as Rs. 5,000, which is on the lower side and it be enhanced suitably.

3. Per contra Mr. G.V. Krishna Rao, learned counsel appearing for the respondent No. 3/Insurance Company supported the award stating inter alia that the impugned award is strictly in accordance with law and no interference is called for in exercise of appellate jurisdiction u/s 173 of the M.V. Act.

4. I have heard learned counsel for the parties, considered the rival submissions and have perused the records of the Claims Tribunal.

5. Now the question, which requires consideration whether Claims Tribunal is justified in deducting Rs. 4,000 per month from the salary of deceased towards insurance, income tax etc. The Supreme Court in a decision in Vimal Kanwar and Others Vs. Kishore Dan and Others, be held that if the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income. The Supreme Court held thus:

23. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

this Court held: (SCC p. 133, para 20)

"20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." This Court further observed that : (SCC p. 134, para 24)

"24.....Where the annual income is in taxable range, the words "actual salary" should be read as "actual salary less tax" ".

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that u/s 192(1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ("TDS", for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed u/s 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption Would be that the employer u/s 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

6. In view of the aforesaid legal preposition, the Claims Tribunal was not justified in deducting Rs. 4,000 per month from the salary of deceased towards insurance, income tax etc.

7. In view of the finding as recorded above and the provisions of the Income Tax Act, 1961, as discussed, I hold that the Claims Tribunal has committed legal error in assessing the income of deceased as Rs. 5,000 per month. As per law, the presumption will be that employer at the time of payment of salary deducted income tax on the estimated income of the deceased employee from the salary and in absence of any evidence, I hold that the salary as shown in the last pay certificate (Exhibit- P/7) as Rs. 8996.43 (Gross Salary), in round figure taken as Rs. 9,000 per month i.e. Rs. 1,08,000 per annum should be accepted for calculating the compensation payable to the dependents and 10% i.e. Rs. 10,800 should be deducted from the income of the deceased towards income tax for a

particular year, which comes to Rs. 97,200 as his annual income. After deducting 1/4th towards living and personal expenses of the deceased as number of dependents of family member is four in number, dependency of claimants comes to Rs. 72,900, and by applying the multiplier of 14, annual dependency of claimants comes to Rs. 10,20,600. In addition, Rs. 25,000 towards loss of consortium, Rs. 10,000 towards funeral expenses and Rs. 10,000 towards loss of estate were also awarded. Thus, total compensation of Rs. 10,65,600 with 12% simple interest is awarded to the appellants/claimants.

8. Thus, the compensation of Rs. 6,24,500 granted by the Claims Tribunal is enhanced by Rs. 4,41,100. The appellants/claimants shall also get simple interest on the amount of Rs. 4,41,100 at the rate of 12% per annum from, the date of filing the claim application before the Claims Tribunal till realization of the full compensation. The amount of Rs. 4,41,100 along with interest shall be deposited in the Claims Tribunal within a period of 3 months from today. Rest of the amount awarded shall remain intact. The depositor shall be the same as ordered in the impugned award. In the result, the appeal is allowed in part to the extent indicted above. No order as to costs.