

(1998) 07 OHC CK 0007

In the Orissa High Court

Case No : Miscellaneous Appeal No. 510 of 1991

Kanaka Ghadei and Another

APPELLANT

Vs

Santosh Kumar Mishra and Another

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Citation : (1998) 2 OLR 320

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.C. Sahu, A.N. Sahu, A.B. Mohanty and N.K. Sahu, for the Appellant; P. Roy, (R-2), for the Respondent

Judgement

P.K. Misra, J.—This is an appeal by the claimants claiming higher compensation. The claimant-appellants are the daughter-in-law and son of deceased Banchhanidhi Ghadei. It was alleged that the aforesaid Banchhanidhi Ghadei died in a motor accident caused due to negligent driving of the driver of the vehicle. A sum of Rs. 50,000/- was claimed as compensation. The owner did not contest the case. The Insurance Company, however, contested the case on merit and denied the allegations made in the claim application. The Tribunal on consideration of the materials on record found that the deceased died on account of the motor accident and the accident was caused due to rash and negligent driving of the driver. The Tribunal directed for payment of Rs. 20,000/- as compensation. The present appeal has been filed by the claimants claiming higher compensation. No appeal or cross-objection has been filed either by the owner or the Insurer. In the absence of such challenge, the finding of the Tribunal to the effect that the death was caused due to negligent driving of the driver has become final. The only question that remains to be considered is as to whether the claimants are entitled to higher compensation.

2. In the present case, the Tribunal found that the deceased was earning about Rs. 1200/- per month. The Tribunal calculated Rs. 250/- to be the monthly contribution so far as the claimants are concerned and assessing the age of the

deceased to be 60 years, applied the multiplier of 8. Out of the amount of Rs. 25,000/- so calculated, the Tribunal further deducted a sum of Rs. 5,000/- towards lump sum payment.

3. The finding regarding the age of the deceased appears to be based on surmises and conjectures. P.W. 2, a neighbour of the deceased, had categorically stated that the deceased was two years" younger to the father of the witness and further stated that the age of his father was 57 years (the deposition was given in the year 1991). Such evidence of P.W. 2 had not been assailed in any manner. The witness had claimed that his age was 40 years, but the Tribunal had assessed his age to be 48 years and as such the Tribunal disbelieved the statement of P.W. 2 regarding the age of his own father and the age of the deceased. The assessment of age by the Tribunal is a mere guess-work ignoring the categorical evidence regarding age as given by P.W. 2. In the absence of any challenge to such evidence, such statement regarding age has to be accepted. Therefore, accepting the evidence of P.W. 2 that his father was aged about 57 years in 1991 and the deceased was two years" younger to the father of the witness, it can be safely found that the deceased was aged about 50 years in the year 1986 when the accident occurred. In such view of the matter, instead of applying the multiplier of 8, I think, multiplier of 10 would be more appropriate. Accepting the monthly contribution to be Rs. 250/- and multiplier of 10, the amount comes to Rs. 30,000/-. The Tribunal has not awarded any sum towards funeral expenses and loss of estate. Keeping in view these aspects, Rs. 10,000/- can be awarded. Thus calculated, the compensation payable is Rs. 40,000/-. It is stated that a sum of Rs: 20,000/- as awarded by the Tribunal has already been paid. The balance sum of Rs. 20,000/- as enhanced in this appeal shall be paid with 8 per cent interest from the date of filing the appeal, that is to say, 28.10.1991. Such amount should be paid within a period of three months from today. This amount shall be kept in fixed deposit in the name of the appellant for a period of three years with permission to withdraw quarterly interest.

4. Subject to the aforesaid direction, the Misc. Appeal is allowed in part. There will be no order as to costs.