(2008) 06 CHH CK 0014

In the Chhattisgarh High Court

Case No : M.A. No. 414 of 2000

Kaushliya Bai (Smt.) APPELLANT

Vs

Vijay Kumar and Others RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 4 MPJR 10

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Bhishma Kinger, for the Appellant; N.P. Kostha, Advocate For respondent no. 2 and Mr. Rajendra Kumar Tripathi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.

The Appellant/claimant has filed this appeal for enhancement of the amount of compensation awarded by claims Tribunal, Raipur, in claim case No. 21/1997 vide award dated 30.11.1999.

The deceased Chitrasen Tiwari was the son of the claimant. He was a truck driver. He died in an accident which took place on 02.03.1996 when the truck bearing Regn. No. M.P.23-D/3390 was dashed by the offending vehicle i.e., the truck bearing Regn. No. M.R25-7796. The Appellant/claimant filed claim petition u/s 166 of the Motor Vehicles Act pleading that the deceased was earning Rs. 5200/- per month and she claimed a sum of Rs. 6,14,400/-.

The driver and the owner of the offending truck were proceeded ex parte wheres the Insurance Company filed its return and denied its liability.

The learned Claims Tribunal recorded a finding that the deceased was earning Rs. 2000/- per month and deducted 3/4th of Rs. 2000/- towards the personal expenses of the deceased and determined dependency of the mother of the deceased to the extent of 1/4th of total earning that is to extent of Rs. 500/- per month and Rs. 6000/- per year. By applying the multiplier of 15, the total dependency was worked out as Rs. 90,000/- and ultimately an award of Rs. 90,000/- was passed in favour of the Appellant alongwith interest at the ate of 9% per annum from the date of filing of the claim petition till its realization.

Shri Bhishma Kinger learned Counsel for the Appellant argued that the income has been assessed on the lower side; 3/4th deduction was not proper; wrong multiplier was used nothing has been awarded under other permissible heads.

On the other hand, learned Counsel for Respondents No. 2 & 3 supported the award.

We have heard learned Counsel for the parties at length and have also perused to records of the claim ease.

So far as the income of the deceased is concerned, we do not find any illegality in this count. Though the claimant has pleaded that the deceased was earning Rs. 5200/- per month, but no cogent and reliable evidence in this regard was led by her. On due appreciation of evidence available on record, the tribunal has recorded the finding that the deceased was earning Rs. 2000/- per month. After going through the evidence led by the Appellant/ claimant, we do not find any perversity in such finding recorded by the tribunal and the same has to be affirmed. Even, counsel for the Appellant could not point out any such evidence which has either been ignored by the tribunal or not properly appreciated by it for recording such finding regarding the income of the deceased.

As far as the multiplier is concerned, admittedly the deceased was aged about 25-26 years but he was unmarried and the mother of the deceased was the only dependent on the earning of the deceased, who was aged about 45 years on the date of filing of the claim petition. Therefore, in the facts and circumstances of this case, we do not find that a lower multiplier was applied by the Tribunal.

Indeed, the argument regarding deduction requires consideration by this Court. The Tribunal determined that the deceased was earning Rs. 2000/- per month and he must be spending on himself 3/4th of the said income that is Rs. 1500/- and the dependency of the mother was determined to the extent of 1/4th. This does not appear to be reasonable. Such finding of the tribunal, in the facts and circumstances of the case, is not in accordance with law. Admittedly, the deceased was unmarried and there were two members in his family. Therefore, the Tribunal ought to have deducted 50% from the income of the deceased towards his personal expenses and to this extent the award requires to be modified. Apart from the above, the Tribunal has not awarded any amount for funeral expenses and for loss of estate to the mother of the deceased. We deem it appropriate to award Rs. 2000/- on account of funeral expenses and Rs. 30007- on account of loss of estate to the mother of the deceased. Therefore, we recomputed the amount of damages in the following manner.

The monthly dependency of the claimant/Appellant is held as Rs. 1000/- and the annual dependency as Rs. 12,000/-. By applying multiplier of 15, the loss of dependency is determined as Rs. 1,80,000/-. By adding Rs. 2000/- towards funeral expenses and Rs. 3000/- towards loss of estate, the total amount of compensation is worked out as Rs. 1,85,000/-. In this manner, we enhance the amount of compensation by Rs. 95,000/-. On this amount, we also award interest @ 6% per annum from the date of filing of the claim petition till its realization. The insurance company is granted two months time to deposit the enhanced amount of compensation and interest before the concerned claims tribunal.

The appeal is allowed to the extent indicated above. There shall be no order as to costs.

