
(2006) 01 GAU CK 0085
In the Gauhati High Court
Case No : MAC App. No. 104 of 2004

Keramati Deb Barma

APPELLANT

Vs

Pran Gopal Debbarma and Others

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 166, 173

Citation : (2006) GLT 785 Supp

Hon'ble Judges : R.B. Misra, J;A.B. Pal, J

Bench : Division Bench

Advocate : A.M. Lodh and P.S. Roy, for the Appellant; S.M. Ali and P. Roy Barman, for the Respondent

Judgement

R.B. Misra, J.—The present appeal preferred u/s 173 of the Motor Vehicles Act, 1988 is directed against the judgment passed by Motor Accident Claims Tribunal, West Tripura, Agartala, in short called "Tribunal" on 10.9.2004 in T.S. (MAC) 403 of 2002, whereby, in reference to the death of Tarani Debbarma, the husband of the Appellant on 30.3.2002 in G.B. Hospital consequent upon an accident, which took place on 29.3.2002 at 5.30 p.m. on Matambari Road by rash and negligent driven vehicle bearing No. TR-01-3322, an amount of Rs. 2,79,000/- was awarded as compensation. The earning of the deceased was claimed to be Rs. 4,500/- per month and the deceased was said to be the sole bread earner. For adjudicating the claim of compensation, issues were framed and on the basis of materials and evidences available, it was indicated that the death of Tarani Debbarma took place due to the rash and negligent driven above insured vehicle, therefore, the insurance company was held liable for making the above compensation.

2. For the purpose of calculation, the learned Tribunal has taken the age of the deceased as 35 years and in absence of any certificate or any material evidence or in absence of proof in support of the claim the monthly earning of the deceased was taken as Rs. 2,000/- whereas according to the learned Counsel for

the Appellant, the deceased was doing the tailoring work and a certificate by a local MLA said to have been issued indicating that his earning was Rs. 4,500/- per month, therefore, it was reasonable to believe the income of the deceased as Rs. 4,500/- per month as disclosed by the Appellant. It is pertinent to note that the certificate dated 2.7.2002 of the Member of Tripura Legislative Assembly was neither exhibited nor was analyzed by the learned Tribunal in fixation of the monthly income of the deceased. In absence of any certificate or any material or proof assuming Rs. 2,000/- as monthly income and the annual income was taken as Rs. 24,000/- and applying the multiplier of 17, the total amount was taken as Rs. 4,08,000/- and deducting one-third as expenses over the victim incurred for maintaining himself, the total amount of compensation was indicated as Rs. 2,72,000/- and adding Rs. 2,000/- as funeral expenses and Rs. 5,000/- for loss of consortium, a total amount of Rs. 2,79,000/- was awarded as compensation.

3. We have heard the learned Counsel for the Appellant as well as the other party and have perused the records.

4. We find no reason to interfere with the calculation made by the learned Tribunal for arriving at a just and proper compensation. In absence of any certificate or proof or material in support of income, the learned Tribunal has not erred in presuming the income of deceased as Rs. 2,000/- per month. We have noticed that instead of awarding any conventional amount for loss of consortium, shocks and sufferings of the bereaved family members, the learned Tribunal has awarded only Rs. 2,000/- as funeral expenses and Rs. 5,000/- towards loss of consortium following the formula laid down in the seventh schedule u/s 163 of the M.V. Act. Keeping in mind that the peculiar facts of the present case is one u/s 166 of the said Act, we are of the view that it was not necessary for the learned Tribunal to go by the figures laid down in the said schedule for funeral expenses and loss of consortium. The claimant-Appellant, in our view, is entitled to a conventional amount following the ratio laid down by the Apex Court in *Lata Wadhwa and Others Vs. State of Bihar and Others*, The relevant part of that judgment is quoted below:

Shri Chandrachud also has considered the income of the husbands of those housewives, who are employees of the Company and then on that basis, has tried to determine the loss on the death of the wife and after applying the multiplier and determining the total amount of compensation, an addition of Rs. 25,000/- has been made as a conventional figure and the total amount of compensation has been arrived at.

5. In view of the above, we award an amount of Rs. 30,000/- as conventional amount in place of Rs. 7,000/- (Rs. 2,000/- as funeral expenses and Rs. 5,000/- as loss of consortium) as awarded by the learned Tribunal. So, this extra amount of Rs. 23,000/- shall have to be paid by the insurance company to the Appellant with 6% interest p.a. from the date of award till the payment is made. The insurance company shall make the payment within two months from the date of passing of this judgment.

6. The appeal is closed modifying the judgment and award, impugned herein, to the above extent.