(2020) 10 CHH CK 0012

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 1472 Of 2015

Kishori Pathak And Ors APPELLANT

Vs

Ludaru Ram Mourya And Ors RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2020) 10 CHH CK 0012

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : Pravin Kumar Tulsyan, Dashrath Gupta

Final Decision : Allowed

Judgement

Sanjay S. Agrawal, J

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') for enhancement of the award impugned dated 09.07.2015 passed in Claim Case No.238 of 2014, whereby, the learned Tribunal has awarded a total amount of compensation to the tune of Rs.32,69,300/- with 9% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter, as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 10.10.2014, the deceased Sanjeev Pathak was going by his motorcycle from Chandani Chowk to Collectorate Office at Jagdalpur. At the relevant time, he was hit vehemently from its back side by the offending vehicle 'Truck' bearing registration no. CG-17-H-1127, which was being driven in a rash and negligent manner by its driver namely, Ludaru Ram Morya/non-applicant no.1, owing to which, the deceased was injured badly and was admitted into the Maharani Hospital at Jagdalpur, where he succumbed to the injuries, during the course of his treatment. A

criminal case was registered by the concerned Police Station against the said driver under Section 279 and 337 of I.P.C. and upon its investigation, the charge sheet was submitted against him before the Chief Judicial Magistrate, First Class, Jagdalpur, while registering an offence punishable under Section 279, 337 and 304-A of I.P.C.

3. On account of the aforesaid accident, the claimants, who are widow, minor child and mother of the deceased, have instituted a claim petition under Section 166 of the Act of 1988 by submitting inter alia that the deceased, a 37 years old, was a Time Keeper employed in the Water Resources Department, Jagdalpur, at monthly wages of Rs.19,000/- and claimed compensation of Rs.41,50,000/- under various heads.

4. The aforesaid claim has been contested by the non-applicants.

According to the driver and owner, the deceased himself was responsible for the alleged accident and pleaded further that since the alleged offending vehicle was insured with non-applicant no.3/The New India Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While the insurer of it, has taken a plea that the driver of it, was not holding the effective and valid driving licence nor was it being driven with a valid permit and fitness certificate, as such, entitled to be exonerated from its liability.

5. The claimants have examined Smt. Kishori Pathak (AW-1), Raman Thakur (AW-2), the eye witness to the alleged accident and Ishtiyaque Meer (AW-3), who was the employee of the said Irrigation Department in support of their claim, while none was examined by the non-applicants in rebuttal.

6. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred on 10.10.2014, due to rash and negligent driving by the driver of the alleged offending vehicle, which led to the sad demise of Sanjeev Pathak. It held further that the vehicle in question was not being used in violation of the policy, as alleged by the insurer, and that by considering the monthly income of the deceased to the tune of Rs.18,860/-, and by deducting a sum of Rs.500/-, Rs.465/-, and Rs.30/-, towards "Tribal Allowance", "House Rent" and "Water Charges" respectively, totaling Rs.975/-, assessed the monthly dependency of the claimants at Rs.17,885/- and thereby, awarded the aforesaid amount of compensation along with its interest as mentioned herein above.

7. According to Shri Praveen Kumar Tulsyan, learned counsel appearing for the appellants/claimants, the deductions as made by the Tribunal from the salary of the deceased are wholly unjustified and liable to be set aside as it was the part of his salary and required to be taken into consideration for calculating the amount of compensation. According to him, only the statutory deductions, like the income tax and professional tax, alone are required to be deducted while placing his reliance upon the decision rendered by the Supreme Court in the matter of

National Insurance Company Limited vs. Indira Srivastava And Others reported in 2008 (2) SCC 763. It is contended further that the amount of compensation as awarded towards the conventional heads is also not in accordance with law as the widow and minor child of the deceased were entitled to be awarded consortium under the head of "Spousal and Parental Consortium" in the light of the principles laid down by the Supreme Court in the matter of National Insurance Company Limited vs. Pranay Sethi and Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others reported in (2017) 16 SCC 680 and (2018) 18 SCC 130 respectively.

8. Shri Dashrath Gupta, learned counsel appearing for non-applicant no.3/ Insurance Company has supported the award impugned as passed by the Tribunal.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. The deceased Sanjeev Pathak was 37 years old at the time of the accident as evidenced by his High School Certificate (Ex. A-11), where, his date of birth has been shown as 25.08.1977. He was working as a Time Keeper in Water Resources Department at Jagdalpur and used to draw the gross monthly salary of Rs.18,860/-, as evidenced by the disbursement slips marked as Ex.A-10 and Ex.A-16. Out of it, total deduction of Rs.2,441/-, has been shown under different heads, like C.P.S. Fund Rs.1,816/-, Group Insurance Rs.150/-, House Rent Rs.445/- and Water Charges Rs.30/-. While determining the amount of compensation, the Tribunal has deducted the following amounts under different heads as under:-

Sl. No.	Heads under which deduction is mad	Amounts (in Rupees)
1.	Tribal Allowance	500/-
2.	House Rent Allowance	445/-
3.	Water Charges	30/-

Total

Rs.975/-

11. After deducting the aforesaid amounts from the gross salary of the deceased, his monthly income was, thus, assessed at Rs.17,885/-. It, however, appears that the approach of the Tribunal while deducting the aforesaid amount from his salary is wholly unjustified, as those are beneficial to the entire family of the deceased during his service tenure and the claimants have been deprived of it on account of his untimely death. It is to be noted at this juncture the principles laid down by the Supreme Court in the matter of Asha And Others vs. United India Insurance Company Limited And Another reported in 2008 (2) SCC 774, wherein at paragraph 9, observed as under:-

Para. 9 "The Claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive ".

12. The Madras High Court in the matter of National Insurance Company Limited vs. Padmavathy reported in 2007 AIHC 1921, observed at para 7 that the statutory deductions, such as income tax and professional tax, which is not repayable by the employer, can only be deducted and after upholding the said observation, it has been held by the Supreme Court in the matter of National Insurance Company Limited vs. Indira Srivastava And Others (supra), at paragraphs 14 and 19 as under:-

"14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathi, wherein it was held: (AIHC pp. 1927-28, para 7)

"7. ... Income tax, professional tax which are deducted from the salaried person goes to the coffers of the Government under specific head and there is no return. Whereas, the general provident fund, special provident fund, LIC contribution are amounts paid under specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the legal representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the legal representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation.

Any contributions made by the employee during his lifetime, form part of the salary and they should be included in the monthly income, while computing the dependency compensation."

"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

13. It is thus clear from the aforesaid settled principles of law that the statutory deductions like income tax, professional tax and any other contribution which are not repayable by the employer, alone can be deducted from the salary of the deceased person while determining the monthly income for computing the amount of compensation towards dependency. In view of the said background, the deduction as made by the Tribunal deducting the amount of Rs.500/-, Rs.445/-and Rs.30/-, towards "Tribal Allowance", "House Rent Allowance" and "Water Charges" from the salary of the deceased forming the part of his income, thus, deserves to be and is hereby set aside. It, accordingly, held the monthly income of the deceased at Rs.18,860/-for the purposes of determining the amount of compensation.

14. Now, considering the monthly income of the deceased at Rs.18,860/-, and considering further the age of the deceased, who was found to be 37 years old at the time of accident, an addition of 50% of it, i.e., Rs.9,430/-, towards future prospects of his income, is to be made in order to ascertain his actual salary in the light of principles laid down by the Constitution Bench of the Supreme Court in the matter of National Insurance Company Limited vs. Pranay Sethi (supra). It would, thus, come to Rs.28,290/- (Rs.18,860/- + Rs.9,430/-). Since the number of dependents upon him was 3, therefore, 1/3rd of it i.e., Rs.9,430/-, towards his personal and living expenses is to be deducted. The total monthly dependency of the claimants would thus come to Rs.18,860/-, (Rs.28,290/- - Rs.9,430/-), yearly Rs.2,26,320/-, (Rs.18,860/- x 12). Looking to the age of the deceased, multiplier applicable would be 15, therefore, the total dependency would be worked out at Rs.33,94,800/-(Rs.2,26,320/- x 15).

15. Besides, the widow and minor child are entitled to be awarded loss of consortium under the head of spousal and parental consortium in the light of the principles laid down by the Supreme Court in the matter of Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others (supra) at the rate as held in the said matter of Pranay Sethi (supra). Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

Mode of Compensation

Amount (in Rs.)

(I)

For loss of spousal consortium to widow

40,000/-

(ii)

For loss of parental consortium to child

40,000/-

(iii)

For funeral expenses

15,000/-

(iv)

For loss of estate

15,000/-

Total

Rs.1,10,000/-

16. Consequently, the claimants would be entitled to a total sum of Rs.35,04,800/- (Rs.33,94,800/- + Rs.1,10,000/-) with 9% interest per annum from the date of filing of claim petition till the date of actual payment.

17. In view of above, the appeal is allowed in part to the extent indicated herein above and rest of the observations made by the Tribunal shall remain intact.

No order as to costs.