(2015) 01 GAU CK 0029

In the Gauhati High Court

Case No : M.A.C. App. No. 25 of 2014

Lalthankimi APPELLANT

Vs

Ropari and Others RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 2 ACC 549

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : C. Lalramzauva, Senior Advocate, A.R. Malhotra and Johny L. Tochhawng, for the Appellant; T. Lalnunsiama, Lalrinnungi Sailo and Elizabeth K. Lalrinmawii, Advocates for the Respondent

Final Decision : Allowed

Judgement

Lanusungkum Jamir, J.—Heard Mr. C. Lalramzauva, learned Senior Counsel assisted by Ms. K. Lalramnghaki, learned Counsel appearing for the appellant as well as Mr. T. Lalnunsiama, learned Counsel for the respondent No. 2 i.e. United India Insurance Company Limited. None appears for the respondent No. 1 i.e. owner of the vehicle. This appeal is directed against the judgment and award dated 4th July, 2014 passed by the learned Motor Accident Claims Tribunal, Aizawl, Mizoram in MACT Case No. 24/2013 whereby compensation award of Rs. 3,69,500 was awarded to the claimant/appellant to be paid by the respondent No. 2 i.e., Insurance Company along with interest @ 9 per cent per annum from the date of filing of the claim petition within 1 (one) month from the date of the judgment and award. The appellant who was the claimant before the learned Tribunal being not satisfied with the awarded amount has preferred this appeal praying for enhancement of the award.

2. The claimant/appellant before this Court is the wife of the deceased i.e. Robert Zosangliana (L). The deceased who was about 40 years died in a motor vehicular accident involving a Taxi (Maruti 800) bearing Registration No. MZ01/B-0535 belonging to the respondent No. 1. The deceased was the driver of the Taxi and

on 3rd August, 2012 at about 11.00 a.m. while the said Taxi was proceeding towards Aizawl from Serchhip was swept away by the rubble of a stone quarry located near Berawlui. The Taxi was swept down to a precipice about 400 feet from the main road and the deceased who was the driver of the Taxi died on the spot. The deceased was earning about 3,300 per month and the Taxi that was being driven by him was insured with the respondent No. 2. After hearing the parties, the learned Tribunal had made judgment and award as already indicated hereinabove.

3. Mr. C. Lalramzauva, learned Senior Counsel appearing for the appellant submits that the deceased was the driver of the Taxi which was owned by the respondent No. 1. He was also earning an amount of Rs. 3,300 per month and the owner of the vehicle had also issued income certificate to that effect. The said income certificate was also exhibited as Exhibit C-7 before the learned Tribunal. While exhibiting the said income certificate, no objection was raised by the opposite party before the learned Tribunal. Further, when the claimant was examined as claimant witness, in her cross examination, she had stated that the deceased was earning Rs. 3,300 per month and that he may have used about Rs. 500 or so for his personal expenses. This was also not rebutted by the opposite party and therefore the claimant/appellant had clearly proved the income of the deceased. However, the learned Tribunal had come to an erroneous finding that the income of the deceased could not be proved and had fixed the income of the deceased at Rs. 3,000 per month while making the award by completely ignoring the evidence on record.

4. The other submissions of Mr. C. Lalramzauva, learned Senior Counsel, is that no award has been made towards future prospect of the deceased and that the award under the conventional head has also been made without following settled position of law as laid down by the Hon''ble Supreme Court in the case of (a) Smt. Savita Vs. Bindar Singh and Others, (2014) ACJ 1261 : (2014) AIRSCW 2053 : (2014) 8 JT 605 : (2014) 4 SCALE 128 : (2014) 4 SCC 505 , (b) Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 ; (c) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 ; and (d) Kishan Gopal and Another Vs. Lala and Others, (2013) 3 ACC 878 : (2013) ACJ 2594 : (2013) 9 AD 193 : (2013) 5 CTC 212 : (2013) 11 JT 563 : (2014) 1 PLR 276 : (2013) 4 RCR(Civil) 276 : (2013) 10 SCALE 580 : (2014) 1 SCC 244 .

He, therefore, submits that the learned Tribunal had erred in law by making a wrong award which should have been higher than what was actually made in the judgment and award dated 4th July, 2014. In that view of the matter, he submits that the award should be interfered by enhancing the compensation award.

5. Mr. T. Lalnunsiama, learned Counsel appearing for the respondent No. 2 i.e., United India Insurance Company Ltd. submits that there is nothing wrong in fixing the income of the deceased at Rs. 3,000 per month inasmuch as they could not prove the income certificate which was exhibited before the learned Tribunal. He also submits that the Insurance Policy of the vehicle covers only within Aizawl city and not beyond. As the vehicle was coming from Serchhip towards Aizawl and had met the accident in the outskirt of Aizawl, there is no question of paying any compensation to the claimant/appellant and therefore the question of enhancement does not arise. He also submits that the facts and circumstances as considered by the Hon''ble Supreme Court in the case of Rajesh and Others (supra), as well as Savita (supra) are different and therefore is not applicable to the present case in hand. While referring to the case of Kishan Gopal (supra), he submits that in that case, it was concerning the death of a minor child and therefore the compensation was considered from a different angle, whereas, in the present case the deceased was a mature and, therefore, the case of the Kishan Gopal and Another (supra), would not cover the present case in hand. He, therefore submits that the present appeal be dismissed as being without merit.

6. I have considered the submissions forwarded by the learned Counsel appearing for the parties.

7. Coming to the income of the deceased, this Court has noticed from the record that the income of the deceased was exhibited as Exhibit C-7 before the learned Tribunal. The said income certificate indicates that the deceased was being paid Rs. 3,300 per month and the income certificate was issued by the owner of the Taxi involved in the accident i.e. respondent No. 1. The income certificate was allowed to be exhibited before the learned Tribunal without any challenge by the respondents nor any suggestions were made to rebut the statement of C.W. in the cross-examination. This being the position, this Court is of the considered opinion that the claimant/appellant has been able to prove the income certificate and therefore the income of the deceased should be considered as Rs. 3,300.

8. This Court has also noticed that the learned Tribunal has failed to make any award towards future prospect. In the case of Rajesh and Others (supra), the Hon''ble Supreme Court has held at paragraph 8 as under:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

9. In the case of Savita (supra), the Hon''ble Apex Court had awarded Rs. 1 lakh towards loss of consortium and Rs. 25,000 towards funeral expenses respectively.

10. With regard to the contention of the learned Counsel appearing for the respondent No. 2 that the case referred to by the learned Counsel for the appellant is not applicable to the present case in hand, I am afraid to observe that this Court is not in agreement made by the learned Counsel for the respondent No. 2.

11. Accordingly, this Court is of the considered opinion that the appellant has made out a case calling for the enhancement of the judgment and award dated 4th July, 2014 passed in MACT Case No. 24/2013. It is held that the appellant shall be entitled to the following compensation award as under:

12. It is submitted at the bar that after the judgment and award dated 4th July, 2014 was made, the respondent No. 2 i.e. Insurance Company had already paid the awarded amount of Rs. 3,69,500 along with interest @ 9 per cent per annum to the claimant/appellant.

13. That being the position, it is now held that the respondent No. 2 i.e. United India Insurance Company Limited shall be liable to pay a further amount of Rs. 6,64,800 - 3,69,500 = Rs. 2,95,300 (Rupees two lakh ninety five thousand three hundred only) along with interest @ 9% per annum within a period of 1 (one) month from the date of receipt of a copy of the judgment and order of this Court by the respondent No. 2. Accordingly, this appeal is allowed. No cost.

