(2007) 07 CHH CK 0019

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 751 of 1997

Laxmi Bai and Others — APPELLANT

Vs

Harbansh Singh and Others — RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 3 CGLJ 446

Hon'ble Judges : Jagdish Bhalla, Acting C.J.;D.R. Deshmukh, J

Bench : Full Bench

Advocate : S.C. Verma, for the Appellant; V.R. Tiwari, - Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

D.R. Deshmukh, J.—The Appellants/claimants who are the widow, two minor children and brother of the deceased - Sagar Singh, aged about 34 years are aggrieved by the award dated 28-02-1997 passed by the 6th Additional Motor Accidents Claims Tribunal, Raipur (MP) (hereinafter referred to as "the M.A.C.T.") whereunder compensation of Rs. 2,18,000/- has been awarded to the Appellants/ claimants.

2. In this appeal it is not disputed that on 04-12-1994, Sagar Singh, a pedestrian, had met with an accidental death due to collision with Maruti Van bearing Registration No. M.R-23-D/3667 driven by Harbansh Singh-the Respondent No. 1, owned by Kulwant Singh, the Respondent No. 2 and insured by the Respondent No. 3. Liability of the insurer to compensate the Appellants/ claimants is also not disputed in this appeal. The M.A.C.T. held that death of Sagar Singh was as a result of rash and negligent driving by the Respondent No. 1. The monthly dependency of the Appellants/claimants was assessed by the M.A.C.T. at Rs. 1,300/- per month is also not under dispute in this appeal.

3. The M.A.C.T. awarded compensation of Rs. 2,18,400/- by applying the

multiplier of 14 while taking into consideration the age of the deceased at 34 years. No amount was awarded under conventional heads.

4. Shri S.C. Verma, learned Counsel for the Appellants/claimants has urged that since the accident had occurred on 04-12-1994 i.e. after coming into force of the second schedule to the Motor Vehicles Act, 1988, multiplier 17 was applicable for the age group 30 to 35 years. Placing reliance on Jyoti Poddar and Others Vs. Goukaran and Others, and Smt. Ishwari Nishad and Ors. v. Mehtab Khan and Ors. 2006 (1) CGLJ 417 it was urged that compensation under conventional heads i.e., loss of consortium, funeral expenses, loss of love and affection and loss of estate ought to have been awarded by the M. A.C.T..

5. On the other hand, learned Counsel appearing for the Respondent/insurer argued in support of the impugned award.

6. Having considered rival submissions, we have perused the record. The accident had occurred on 4-12-1994. The second schedule of the Motor Vehicles Act, 1988 was introduced w.e.f. 14-11 -1994 whereunder for the age group of 30 to 35 years, multiplier 17 is applicable. The claimants were the widow, aged 30 years two minor children and brother aged 23 years. Thus, the M.A.C.T. ought to have applied multiplier 17 instead.of multiplier 14. We accordingly apply the multiplier of 17 and assess the loss of dependency at Rs. 2,65,200/- [Rs. 1,300 x 12 x 17].

7. In Smt. Ishwari Nishad and Ors. v. Mehtab Khan and Ors. 2006 (1) CGLJ 417, a Division Bench of this Court held that the compensation to be awarded under the conventional heads should reflect the time and place of the accident and the steep fall in the money value in recent years and cannot be static for all the times. It is the ratio that binds us. The amount to be awarded shall vary in the facts and circumstances in each case. The case law cited also does not reflect the time and place and the status of the deceased. It is also not clear whether the case law cited related to an accident prior to the amendment to the second schedule w.e.f. 14- 11-1994. Therefore, although we adhere to the principle laid down by the Division Bench in Smt. Ishwari Nishad 2006 (1) CGLJ 417 (supra), the facts and circumstances showing the status of the deceased, date, time and place of the accident will have to be taken into consideration. So far as the steep fall in the money value in recent years is concerned, we are of the considered opinion that for compensating the Appellants/claimants, the interest payable on compensation should be suitably awarded. We cannot ignore the fact that on 14.11.1994 i.e. hardly a month before the accident occurred on 4.12.1994 the Parliament had introduced the second schedule to Section 163-A of the Act providing for general damages to be awarded under conventional heads in case of a fatal accident. The date, time and place of the accident was 04-12-1994 at Kota, the deceased was a truck driver and was earning Rs. 2,500/- per month and a small amount of Rs. 50/- as daily allowance. Loss of monthly dependency was admittedly assessed at Rs. 1,300/- per month. It is thus clear that on the death of Sagar Singh, the claimants would not have spent more than Rs. 2,000/-

towards funeral expenses in the year 1994 as is provided in the second schedule. We, therefore, award, Rs. 2,000/- towards funeral expenses. The second schedule further provides that an amount of Rs. 5,000/- shall be payable towards loss of consortium and Rs. 2,500/- towards loss of estate to the widow as general damages. Considering the status of the deceased, his monthly income and the mandate of the second schedule, we award Rs. 5,000/- towards loss of consortium, Rs. 2,500/- towards loss of estate. In view of a catena of decisions of this High Court, we also award a sum of Rs. 6,000/- towards loss of love and affection @ Rs. 2,000/- for the Appellants/claimants No. 2 to 4 each).

8. In this manner, the compensation payable to the Appellants/claimants is assessed by us, as under:

(a) Loss of dependency : Rs. 2,65,200/-

(b) Loss of estate : Rs. 2,500/-

(c) Loss of consortium : Rs. 5,000/-

(d) Loss of love and affection at the rate of Rs. 2,000/- each to the Appellants/ claimants No. 2 to 4 : Rs. 6,000/-

(e) Funeral expenses : Rs. 2,000/-

Total Rs. 2,80,700/-

9. We, therefore, allow this appeal. We award total compensation of Rs. 2,80,700/- to the Appellants/claimants. After adjusting the amount already paid to the Appellants/claimants by the Respondent No. 3/insurer, the remaining amount shall be deposited in the M.A.C.T. by the Respondent/insurer within 30 days from today. Considering the fact that if deposited in any nationalized bank on the date of award, it would have multiplied atleast three times by now and the fact that the claimants/Appellants have been deprived of the enhanced compensation for almost 13 years, to adequately compensate the claimants, we further direct that interest @ 12% per annum to be compounded quarterly from the date of application till realization shall also be paid to the Appellants/ claimants by the Respondent/insurance Company.