

(2008) 06 JH CK 0011
In the Jharkhand High Court
Case No : M.A. No. 170 of 2007

Lilawati Devi and Others

APPELLANT

Vs

The Oriental Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 56 BLJR 2140 : (2008) 3 JCR 556

Hon'ble Judges : M.Y. Eqbal, Acting C.J.;Ajit Kumar Sinha, J

Bench : Division Bench

Advocate : Ashutosh Anand, for the Appellant; Rita Kumari and Gauri Devi, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal ACJ, Ajit Kumar Sinha, J.—This appeal has been preferred by the claimants/appellants for enhancement of amount of compensation.

2. It is a case of death of 27 years young man in a motor vehicle accident, who died leaving behind his parents and younger brothers as dependants. The Tribunal took the notional income of the deceased and multiplied it by 11 and awarded compensation of Rs. 1,17,000/-.

3. For better appreciation, the findings recorded by the Tribunal, as appears in paragraph No. 21, is quoted hereunder:

So far the annual income of the deceased Sunil Paswan is concerned, the evidence of C.W. 1, Baban Paswan, C.W. 2, Lilawati Devi and C.W. 3, Prem Kumar Singh have stated that the deceased Sunil Paswan was earning Rs. 4,000/- per month from betel shop but not a single chit of paper has been brought on record to establish that the deceased Sunil Paswan was earning the aforesaid amount at the time of his death and in absence of documentary evidence in respect of the income of the deceased Sunil Paswan, according to my view, it is a case comes in the category of notional income, as such according to

the second schedule, notional income Rs. 15,000/- per annum would be deemed to be earning of the deceased and after deducting 1/3, it would come to Rs. 10,000/- per annum, could be presumed the income of the deceased for the dependants and according to my view on the said amount, the suitable multiplier as per the second schedule of the M.V. Act would be by eleven on the basis of the age of the father of the deceased who is about the age of 55 years and in that view the multiplicand would come to Rs. 1,10,000/-, further awarded Rs. 2,000/- as funeral expenses and Rs. 5,000/- as loss of estate of the deceased and when I add all these items, the total compensation amount would be Rs. 1,17,000/- (One Lac Seventeen Thousand). It is just and suitable compensation amount liable to be granted in favour of the claimants. I further want to put an interest @ 7% per annum on the compensation amount from the date of admission of the application u/s 166 of the M.V. Act i.e. 13.12.2005, as such issues Nos. 4 and 6 are hereby decided accordingly.

4. Admittedly, evidence was led from the side of the claimants to the effect that the deceased was running betel shop and his monthly earning was Rs. 4,000/-. Merely because no chit of paper with regard to the income of the deceased was produced, the Tribunal took notional income. In our view, the Tribunal has not correctly appreciated the provisions, appended to the Schedule of the Motor Vehicles Act as also the law, laid down by a Division Bench of this Court in the case of Malti Devi v. Sri Umesh Rawani and Ors. reported in 2007(3) L.J.R. 376.

5. As noticed above, oral evidence was adduced on behalf of the claimants in support of their case that the deceased was earning Rs. 4,000/- per month. No evidence controverting the same was adduced either on behalf of the owner of the vehicle or on behalf of the Insurance Company. Certainly, therefore, the deceased must have been earning some amount by doing the betel shop business. Even if we take monthly earning of the deceased at Rs. 3,000/-, the annual dependency comes to Rs. 24,000/-.

6. Taking into consideration the age of the father of the deceased, who is 55 years of age, multiplier of 10 will bring a reasonable amount of compensation. Hence, in our opinion, a sum of Rs. 2,40,000/- should be just and reasonable compensation.

7. This appeal is, therefore, allowed and the amount of compensation is enhanced to Rs. 2,40,000/-. The other part of the findings and the award with regard to interest shall remain intact.