
(2012) 10 PAT CK 0114

In the Patna High Court

Case No : Miscellaneous Appeal No. 514 of 2010

Madhu Mausam

APPELLANT

Vs

Binay Kumar Singh

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Citation : (2013) 1 BBCJ 571 : (2013) 1 BLJud 96

Hon'ble Judges : Mr. Rakesh Kumar, J.

Bench : Single Bench

Advocate : Mr. Vivekanandn Vivek, Advocate, for the Appellant; Mr. Manoj Kumar Gupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Rakesh Kumar, J.(Oral)—Heard Sri Vivekanand Vivek, learned counsel for the appellants, Sri Sanjay Singh, learned counsel, who was assisted by Sri Bimlesh Kumar Jha, learned counsel appearing on behalf of Respondent no.3/ Oriental Insurance Company Ltd. and Sri Dharendra Nath Jha, learned counsel appearing on behalf of Respondent nos. 1 and 2(owner and driver of the offending vehicle respectively).

2. The present appeal under Section 173 of the Motor Vehicle Act,1988 (hereinafter referred to as the "M.V.Act") has been preferred against the Judgment dated 18.03.2010 and Award dated 17.04.2010 passed in Claim Case No.40 of 2009 by the learned 7th Addl. District Judge-cum-Addl. Motor Vehicle Accident Claim Tribunal, Bhagalpur (hereinafter referred to as the " Claim Tribunal"). The claimants/appellants have basically prayed for enhancement of compensation amount. By the Judgment and Award , the learned Claim Tribunal has directed the Respondent no.3/ insurer of the offending vehicle to pay total compensation amount of Rs.3,49,500/- , which includes funeral expenses, loss of consortium and loss of estate. The said compensation was directed to be paid after deducting Rs.50,000/-, which was paid as interim compensation. The compensation amount was directed to be paid along with interest @ 8% from the

date of claim.

3. Short fact of the case is that on 16.03.2009, while the wife of appellant no.1, namely, Nirmala Devi along with her father-in-law was going to Bhagalpur on a Commandar Jeep, bearing Registration No.BR-10B/1682, due to rash and negligent driving by the driver of the Jeep in question, the Jeep turned turtle and met with an accident. In the said accident, the wife of claimant/appellant no.1 received serious injuries and while she was being carried to the hospital, she succumbed to the injuries. In respect of the said accident, an F.I.R. vide Bhagalpur Kotwali P.S. Case No. 861 of 2009 was registered. After the death, postmortem examination was conducted on the dead body of the deceased in J.L.N.M.C.H, Bhagalpur. Thereafter, a claim case was filed before the learned Claim Tribunal, which was registered as Claim Case No. 40 of 2009. Before the learned Claim Tribunal, it was claimed that due to death of the deceased, the claimants had suffered loss and claimed compensation amount of Rs. 9,43,500/-. It was claimed that the deceased was an employee in RANCO PROJECTS, Engineers & Contractors, Navi Mumbai (hereinafter referred to as "Ranco Projects") and she was drawing salary of Rs.6,500/-. To get the case proved, the claimants had filed an application dated 01.02.2010 enclosing therewith (i) certified copy of F.I.R. (ii) photo copy of postmortem report (iii) heirship Certificate in original (iv) Photo copy of Admit Card of the deceased (v) Original certificate of income of the deceased (vi) Photo copy of driving licence (vii) Photo copy of owner book (viii) photo copy of insurance paper (ix) photo copy of road permit and (x) certificate of fitness. In the petition, it was also prayed for getting those documents exhibited for disposal of the case. The claimants also got three witnesses examined in support of the claim case, out of them claimant/ appellant no.1 was examined as Claimant Witness no.1, father-in-law of the deceased, who was co-passenger, was examined as Claimant Witness no.2 and one Awadhesh Kumar was examined as Claimant Witness no.3. Before the learned Claim Tribunal, owner of the offending vehicle i.e. Respondent no.1 and driver/ Respondent no. 2 jointly filed a written statement and Respondent no.3/insurer of the offending vehicle also filed written statement objecting to the claim petition.

4. After hearing the parties and considering the materials available on record, the learned Claim Tribunal was of the opinion that it was a case of rash and negligent driving by the driver of the offending vehicle and it was also held that the offending vehicle was under the insurance cover of Respondent no.3. The learned Claim Tribunal on the basis of notional income calculated the compensation amount and directed the insurer/Respondent no.3 to pay the compensation amount as indicated above.

5. Since the present appeal has been preferred for enhancement of compensation amount, there is no need to discuss in detail other materials. The impugned Judgment and Award passed by the learned Claim Tribunal has been assailed by the claimants/appellants merely on the ground that the deceased was

having monthly income of Rs.6500/-, even then the learned Claim Tribunal directed for calculating the compensation as per the notional income.

6. Sri Vivekanand Vivek, learned counsel for the appellants submits that on the point of monthly income of deceased there was specific statement made in the claim petition, which was corroborated by oral evidence of A.W.1 and A.W.3. He submits that AW1(husband of the deceased) was employed in the Ranco Projects and in the said establishment , his wife (deceased) was working as Office Assistant and she was drawing salary of Rs.6500/- per month. This fact was also substantiated from the deposition of A.W.3, who was Junior Engineer in the Ranco Projects. He (A.W.3) has also specifically stated that the deceased was employed in the Ranco Projects and she was drawing salary of Rs.6500/- per month. Besides this, before the learned Claim Tribunal the claimants along with other documents had filed certificate issued by the Ranco Projects to show that the deceased was drawing salary of Rs.6500/- per month. He submits that despite the fact that original certificate to show salary of the deceased was brought on record along with application dated 01.02.2010, the learned Claim Tribunal in its impugned Judgment has recorded a finding contrary to record that no documentary evidence was produced by the claimants on the point of income of the deceased. Along with present memo of appeal, the appellants have brought on record Annexure-1 (a certificate dated 03.04.2009 issued by one of the partners of Ranco Projects) and Annexure-2 (certified copy of the petition dated 01.02.2010), whereby the documents were brought on record. On the aforesaid ground, it has been argued that the learned Claim Tribunal has committed serious error in rejecting the claim of monthly income of the deceased. He submits that the impugned Judgment and Award be modified and compensation amount be enhanced after treating the salary of Rs.6500/- as monthly income of the deceased.

7. Learned counsel appearing on behalf of the Respondent no.3/ insurer of the offending vehicle has opposed the prayer of the appellants. He submits that though as per Schedule-II of the M.V.Act, notional income has been prescribed to the extent of Rs.15,000/- per annum, the learned Claim Tribunal in a fair manner in view of recent pronouncement of the Apex Court as well as this Court has treated the notional income of the deceased as Rs.36,000/- per annum and thereafter compensation amount has been calculated. He submits that the learned Claim Tribunal has rightly not accepted the claim in respect of so called income of Rs. 6500/- of the deceased. He further submits that the certificate, which has been brought on record in the memo of appeal i.e. Annexure-1 to the appeal, may not be looked into by this Court. He submits that this document was not got exhibited before the learned Claim Tribunal. He further submits that even in normal course, interest amount is directed to be paid @ 6% per annum, but the learned Claim Tribunal in the present case has directed to pay the interest @ 8% per annum on the compensation amount from the date of claim till the date of payment. According to him, the Judgment and Award requires no interference. It was submitted that in terms of Judgment and Award of the learned Claim

Tribunal, compensation amount with interest has already been paid to the claimants.

8. Besides hearing the parties, I have also perused the materials available on record, particularly lower court record. It is true that on 01.02.2010, by filing a petition for getting the documents exhibited, the claimants had enclosed so called certificate issued by the Ranco Project, but no effort was taken on behalf of the claimants to get the said certificate exhibited. From the ordersheet of the learned Claim Tribunal dated 04.03.2010, it is evident that number of documents were got exhibited, which were enclosed with the petition dated 01.02.2010. However, no step was taken on behalf of the claimants to get the certificate issued by the Ranco Project exhibited and, as such, the said certificate was not marked as Exhibit. Even thereafter, it is evident that the claimants have not raised any objection on the issue. Once a document, on which the claimants/appellants are relying, was not exhibited before the learned Claim Tribunal, at the stage of appeal said document may not be examined by this Court. Moreover, only on the basis of said certificate and oral evidence, it was not necessary for the Claim Tribunal to accept the claim in respect of income of the deceased as Rs.6500/-. The learned Claim Tribunal, while refusing to accept the claim of earning of the deceased, has categorically dealt with in its Judgment at page no.5 (Issue no.6). Had it been a case of income of the deceased to the tune of Rs.6500/- as salary being drawn from Ranco Projects, besides oral evidence, the claimants were required to bring on record other necessary documents; such as Pass Book, Account showing deduction of GPF, Appointment letter etc.. Nothing before the learned tribunal was brought on record save and except oral evidence. Even it was not established that either A.W.1 or A.W.3, who had claimed that they were employee of Ranco Projects, had brought on record any documentary evidence and, as such, the Court is of the opinion that Issue no.6, which was relating to compensation amount, has rightly been decided by the learned Claim Tribunal. The Judgment and Award of the learned Tribunal directing for payment of Rs.3,49,500/- along with 8% interest from the date of filing of the claim petition appears to be reasonable.

9. I do not find any ground for interference with the impugned Judgment and Award regarding enhancement of the compensation amount. Accordingly, the appeal stands dismissed.