(2008) 04 CHH CK 0010

In the Chhattisgarh High Court

Case No : M.A. No. 365 of 2001

Malti Bai (Smt.) and Others — APPELLANT

Vs

Ghasiya Ram and Others — RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 4 MPJR 117

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Rakesh Pandey, for the Appellant; Dashrath Gupta, for the Respondent

Final Decision : Allowed

Judgement

Rajeev Gupta, C.J.

This is claimants appeal filed u/s 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, Durg (for short "The Tribunal), vide award dated 16-04-2001, passed in Claim Case No. 68/ 2000.

The claimants, unfortunate widow, minor children and mother of deceased - Surendra @ Suresh, claimed compensation of Rs. 46,50,000/- for his death in the motor accident, when on 19-08-2000 his scooter bearing registration No. M.P. 24-Y.A.3858 was dashed by the offending vehicle - jeep bearing Registration. No. M.P. 23-T/1408, resulting in multiple serious injuries to Surendra @ Suresh, who succumbed to those injuries during the course of his treatment in the hospital on 28-08-2000.

The claimants further pleaded that deceased - Surendra @ Suresh used to earn Rs. 21,000/- per month by plying a truck and supplying that building material.

The owner and driver of the jeep did not contest the claim and were proceeded ex-parte before the Tribunal. The insurer of the offending vehicle-jeep contested the claim and denied its liability to pay compensation to the claimants on the plea that the jeep was being plied in breach of the policy conditions and the driver of the jeep was not holding a valid driving licence.

The claimants examined AW1 - Malitibai, AW2 - Vishnu Dewangan & AW3 - Arun Kumar in support of their claim, whereas the insurer of the offending vehicle - jeep did not examine any witness in rebuttal.

The Tribunal on the evidence led by the parties held that deceased -Surendra @ Suresh died on 28-08-2000 on account of the injuries sustained by him in the motor accident on 19-08-2000, the accident occurred due to rash and negligent driving of the driver of the offending vehicle - jeep; and as the offending vehicle - jeep was insured on the date of the accident with the National Insurance Company Limited, the Insurance Company was liable to pay compensation to the claimants.

The Tribunal assessed the income of the deceased at Rs. 3,750/- per month. By deducting 1/3rd of Rs. 3,750/- the claimants'' dependency was assessed at Rs. 2,500/- per month (wrongly mentioned as Rs. 2,750/- in para, 15 of the award). After assessing the income of the deceased and the claimants'' dependency as mentioned above, the Tribunal assessed the compensation payable to the claimants at Rs. 50,000/- only instead of multiplying the annual dependency of the claimants with the appropriate multiplier. By awarding a sum of Rs. 3,169,37, towards medical expenses; Rs. 2,000/- for funeral expenses; and Rs. 5,000/- for loss of consortium to the widow, the Tribunal awarded a total sum of Rs. 60,169/- as compensation to the claimants for the death of deceased - Surendra @ Suresh in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 60,169/-@9% per annum in the event of insurer''s failure to deposit the amount of compensation within a period of one month from the date of the passing of the award.

Shri Rakesh Pandey, learned Counsel for the Appellants submitted that the Tribunal has erred in awarding a lumpsum compensation of Rs. 50,000/- towards the loss of dependency instead of assessing the compensation by multiplying the annual dependency assessed by the Tribunal with the appropriate multiplier; and in awarding low compensation of Rs. 60,169/- to the claimants,

Shri Dashrath Gupta, learned Counsel for Respondent No. 3 - The National Insurance Company Limited, on the other hand supported the award.

The finding recorded by the Tribunal that deceased - Surendra @ Suresh died on account of the injuries sustained by him in the motor accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle - jeep; and the insurer of the jeep was liable to pay compensation to the claimants have now attained finality as the Respondents have not filed any appeal against the award. That apart, there is overwhelming evidence available on record to establish the above facts beyond any shadow of doubt. We, therefore, affirm the above findings recorded by the Tribunal.

On a bare perusal of para 15 of the award, we find that the Tribunal has erred in not assessing the compensation payable to the claimants by multiplying the annual dependency with the appropriate multiplier and awarding a lumpsum of Rs. 50,000/- towards loss of dependency to the claimants. We, therefore, propose to recompute the compensation taking the monthly income of the deceased at Rs. 3,750/- assessed by the Tribunal.

By deducting l/3rd of Rs. 3,750/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs. 2,500/- per month and Rs. 30,000/- per annum.

Deceased - Surendra @ Suresh was 35 of years of age on the date of the accident whereas his widow Smt. Maltibai was shown 33 years of age in the claim petition filed in the year 2000.

The Apex Court in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, while holding that multiplier of 12 would be appropriate in the said case where the age of the deceased was 38 years, observed in para 17 as under:

17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs. 4,50,000(in round figures). The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of prevailing rate of interest on bank deposits, the same is fixed at 7.5% per annum. It is sated that a sum of Rs. 4,00,000 has been deposited pursuant to the order dated 22-3-2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (Respondent 1) minor child (Respondent 2) and mother (Respondent No. 3) in the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, So far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor.

The Apex Court in its recent judgment in the case of The New India Assurance Company Limited Vs. Smt. Kalpana and Others, while holding that multiplier of 13 is appropriate where the age of the deceased was 33 years, observed in para 13 as under:

13. Considering the age of the deceased it would be appropriate to fix the multiplier at 13. The M.A.C.T. itself found that the income was not established. At

some point of time it was stated that the income of the deceased was Rs. 6,000 per month. In the absence of any definite material about the income, monthly contribution to the family, after deduction for personal expenses is fixed at Rs. 3,000 per month, i.e. annually Rs. 36,000.. Applying the multiplier of 13, the compensation works out to Rs. 4,68,000. The same shall carry interest at the rate of 6 per cent per annum from the date of claim till the date of actual payment. It is stated that a sum of Rs. 4,00,000 has been deposited pursuant to the order dated 4.4.2005. Balance shall be deposited along with interest within two months from today. Out of the total amount, 80 per cent shall be kept in fixed deposit in a nationalized bank initially for a period of five years. But no withdrawal shall be permitted before the expiry of period. However, monthly interest shall be paid to the claimants.

Now reverting to the present case, deceased - Surendra @ Suresh was 35 years of age and his widow Smt. Maltibai was 33 years of age on the date of the accident. In view of the above quoted diota of the Apex Court in the cases of T.N. State Transport Corpn. Ltd. v. Rajapriya (Supra) and New India Assurance Co. Ltd. v. Kalpana (Supra). We are of the opinion that the multiplier of 13 would be appropriate in the present case.

By multiplying the annual dependency of 30,000/- with the multiplier of 13, the compensation works out to Rs. 3,90,000/- By awarding a further sum of Rs. 10,000/- towards loss of consortium to the widow, loss of estate; and funeral expenses, the claimants become entitled to receive Rs. 4,00,000/- By adding the further sum of Rs. 3,169/- awarded by the Tribunal towards the medical expenses incurred by the claimants between 19-08-2000, the date of the accident and 28-08-2000, the date on which the deceased succumbed to his injuries in the hospital, the claimants become entitled to receive a total sum of Rs. 4,03,169/- as compensation for the death of deceased - Surendra @ Suresh.

Considering all the relevant factors including the delay in disposal of the claim petition and the present appeal, we award interest on the above amount of compensation of Rs. 4,03,169/- @6% per annum from the date of filing of the claim petition till the date of actual payment.

For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 60,169/- awarded by the Tribunal is enhanced to Rs. 4,03,169/- with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

Respondent No. 3 the National Insurance Company Limited is granted three months time for depositing the enhanced amount of compensation with interest due thereon.

No order as to costs.