
(2014) 04 OHC CK 0078
In the Orissa High Court
Case No : MACA No. 714 of 2008

Mandakini Patel

APPELLANT

Vs

Ashok Kumar Agrawalla

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2015) 1 ACC 67 : (2015) ACJ 271 : (2014) 2 OLR 323

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghubir Dash, J.—This appeal is against a common award dated 30.7.2007 passed by the learned District Judge-cum-1st M.A.C.T., Sundargarh in MAC. Case Nos. 94 and 95 of 2004 awarding compensation of Rs. 5,43,000/-against two Insurance Companies (respondent Nos. 2 and 4) in equal proportion to be paid to the claimants-appellants with interest @ 7% and praying for enhancement of the amount of compensation.

2. It is not in dispute that late Rohit Kumar Patel died in a vehicular accident that took place on 24.5.2004, in which one Bolero bearing registration No. OR 0Z-7295 and one truck bearing registration No. OR05-S-2331 were involved. It is also not in dispute that the Bolero was insured with United India Insurance Company Ltd. (R-2) and the Truck with Oriental Insurance Company (R-4). It is also not in dispute that appellant Nos. 1 and 4 are the deceased's widow and father, respectively, and appellant Nos. 2 and 3 are his son and daughter, respectively. According to the appellants, the deceased was aged about 40 years. He was serving as a Senior Teacher in one aided High School and getting salary of Rs. 11,000/- per month. Their further claim is that the deceased used to earn Rs. 4,000/- per month from private tuition. The claimants filed two applications; one u/s 166 of the Motor Vehicles Act, 1988 (for short, the "Act") claiming Rs. 10,00,000/- and another u/s 140 of the Act claiming Rs. 50,000/-.

3. Both the Insurance Companies filed their respective written statements denying insurance coverage of the respective vehicles. The age, occupation and the income of the deceased, as claimed by the claimants, were also denied. Each of the Insurance Companies contended that the accident had occurred due to rash and negligent driving on the part of the driver of the other vehicle.

4. However, the learned Tribunal, after examining the materials placed before him, has decided that the accident occurred due to contributory negligence on the part of the drivers of both the vehicles and that the vehicles were insured with the Insurance Companies as claimed. As against these findings, the Insurance Companies do not appear to have preferred any appeal.

5. So far the income of the deceased is concerned, learned Tribunal, in the absence of any evidence showing deceased's income from private tuition, disbelieved the claimant's assertion that the deceased was having income of Rs. 4,000/- per month from private tuition. To prove the monthly salary of the deceased, the claimants relied on one salary certificate (Ext. 10) purportedly issued by the Headmaster I/C of Dinabandhu High School stating therein that the gross salary of the deceased was Rs. 10,542/-. Observing that only net income of the deceased has to be taken into account for computation of the loss of dependency and there being no evidence showing as to what was the net income of the deceased, the learned Tribunal, taking resort to guess work, assessed that the deceased's net salary was not less than Rs. 6,000/- per month. Allowing a deduction of 1/3rd therefrom towards personal expenses of the deceased, the loss of dependency was worked out at Rs. 4,000/- per month and adopting the multiplier of 11, the learned Tribunal assessed the total loss of dependency at Rs. 5,28,000/-. In addition to that, the learned Tribunal awarded Rs. 5,000/- under each of the three heads, i.e., loss of consortium, cost of transportation, funeral expenses.

6. Learned counsel for the appellants submits that the determination of net income made by the learned Tribunal ignoring the income certificate (Ext. 10) without assigning any reason is arbitrary and against the weight of evidence. It is also contended that in the absence of any evidence to the contrary, the claimant's oral evidence that the deceased was having income from private tuition should not have been ignored altogether. It is also contended that the multiplier chosen by the learned Tribunal is not in accordance with well settled position of law.

7. Learned counsel for respondent Nos. 2 and 4, both the Insurance Companies, however, making submissions in support of the award made by the learned Tribunal, assert that the compensation awarded is just and proper. They further submit that the income certificate-Ext. 10 having not been duly proved and any official record maintained by the High School concerned having not been proved before the learned Tribunal showing the employment as well as income of the deceased, the learned Tribunal should not have believed that the deceased was a High School teacher.

8. Ext. 10 was marked at the instance of the deceased-widow, who in her deposition stated that Ext. 10 is the salary certificate in respect of her deceased husband. There was no objection from any corner when the document was exhibited. During cross-examination, neither of the learned counsels for both the Insurance Companies did put any question on the said salary certificate, nor was any suggestion put to the witness that the deceased was not working as a teacher in Dinabandhu High School, Gochhura, Sambalpur and that the certificate exhibited by her was not issued by the Headmaster of that High School. Therefore, the learned Tribunal has rightly relied on the income certificate wherein it is stated that the last drawn salary for the month of April 2004 was as follows:

However, the learned Tribunal has not assigned any reason as to how he worked out the net income of the deceased at Rs. 6,000/-. In the absence of any evidence to the contrary, the figures shown in the salary certificate under the headings Pay and D.A. must be taken to be the net Income of the deceased which put together comes to Rs. 10,224/-. Assuming that there used to be deduction of some amount from the deceased's monthly salary towards professional tax, his net income is rounded off to Rs. 10,000/- per month and the loss of dependency has to be worked out on that basis. The learned Tribunal has deducted 1/3rd of monthly income towards personal expenses of the deceased which is not challenged in this appeal. After such deduction, loss of dependency comes to Rs. 6666/- per month. So far the selection of multiplier is concerned, it is contended by the learned counsel for the appellant that as per the 2nd schedule of the Motor Vehicles Act, the proper multiplier should have been "16". The learned Tribunal has accepted the deceased's age as reflected in the post-mortem report. Since the deceased was working as a teacher in a high school, his age should have been established by proving his service records. For non-production of official records to prove the age of the deceased, adverse inference can be taken to the effect that if the records were produced, the deceased's age would have been found to be more than 40 years, which is reflected by the Doctor in the post-mortem report definitely on the basis of someone's statement who is not subjected to cross examination.

9. Therefore, considering that the deceased's age was above 40 years and not above the age of 45 years, the multiplier of 14 as laid down in Smt. Sarala Burma v. Delhi Transport Corporation (2009) 43 OCR (SC) 349 should be taken to be the proper multiplier.

10. In view of the discussion made above, the total loss of dependency is worked out at Rs. 11,19,888/- which is rounded off to Rs. 11,20,000/- (Rs. 6666 x 12 x 14). Therefore, the compensation awarded by the learned Tribunal is liable to be enhanced. The award towards loss of consortium, cost of transportation and funeral expenses would remain unaltered.

In the result, the appeal is allowed. The amount of compensation awarded by the learned Tribunal is enhanced from Rs. 5,42,000/- to Rs. 11,35,000/- (Rupees

eleven lakhs thirty five thousand). The impugned award stands modified to that extent and rest parts thereof stand confirmed. However, the amount to be kept in fixed deposit in the names of different claimants shall be re-determined by the learned Tribunal keeping in mind the enhancement of compensation made hereunder. The Insurance Companies shall deposit before the Tribunal their respective half of the amount payable under the award within two month hence. Learned Tribunal shall not disburse the amount so deposited unless the claimants satisfy the Tribunal that they have deposited the Court fee payable in this appeal.