(2008) 06 JH CK 0048

In the Jharkhand High Court

Manju Devi and Others APPELLANT

Vs

Babu Lal Gupta and Another RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Citation : (2009) ACJ 1991 : (2008) 3 JCR 622

Hon'ble Judges : M.Y. Eqbal, Acting C.J.;Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, A.C.J.

1. This appeal by the claimants-appellants is for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Hazaribagh in Motor Accident Claim Case No. 109/2003. The Tribunal awarded Rs. 1,79,500/- as compensation for the death of the deceased. Sanjay Singh, who died in motor vehicle accident on 28.9.2002 near Gurudwara Road, Giddi.

2. The vehicle involved in the accident was a dumper bearing registration No. JH02B 1258. The Claimant''s case was that the deceased was employed under M/s. Raju Gupta, Transport contractor as working supervisor and his monthly earning was Rs. 4500/-. The deceased was aged 25 years and died leaving behind widow and three minor children.

3. The owner and driver of the offending vehicle appeared and filed written statement stating inter alia that the vehicle was insured with the respondent-Insurance Company. It was stated that the driver of the offending vehicle was holding a valid driving licence. The respondent-Insurance Company on the other hand defended the action on the ground inter alia that the driver of the offending vehicle was not holding proper and effective driving licence to drive any type of vehicle. It was further alleged that the driving licence of the driver produced before the Court was a forged and fabricated document.

4. The tribunal recorded a finding that since the vehicle was insured the compensation amount shall be paid by the Insurance Company who. in turn, shall be entitled to recover the amount paid to the claimants from the owner of the vehicle.

5. So far findings recorded by the tribunal is concerned, we do not want to go into those findings for the reason that neither the owner of the vehicle nor the Insurance Company has preferred appeal challenging the impugned award nor has filed any cross-objection. The only question therefore to be decided in this appeal is as to whether the compensation amount awarded by the tribunal is just and reasonable.

6. From perusal of the impugned judgment, it appears that the claimant adduced evidence in support of their case that the deceased was earning Rs. 4500/-. The employer, Raju Gupta was also examined as CW2 who stated that the deceased was doing the work of munsi in his Transport company was looking after the vehicles. He further stated that for his employment, he was being paid Rs. 4500/- per month. His appointment letter was also proved and marked as Ext. 1. This witness further deposed that the deceased was getting his wages after putting his signature in the wage register. Another letter of the employer was also proved and marked. Ext. 9 which shows that as per the records of the Accountant, the deceased was working till death and was getting Rs. 4500/- per month. These evidences were not controverted either by the Insurance company or by the owner of the vehicle. Although the tribunal took notice of all these evidences but surprisingly assessed the compensation amount by taking notional income of the deceased.

7. The tribunal has committed serious error of law in assessing compensation by taking notional income when sufficient evidence came on record about the earning of the deceased. It is well settled that notional income is to be taken only in cases where the deceased was non-earning person. In the instant case sufficient evidence come on the record that the deceased was working under the Contractor and was getting wages. Even if the monthly earning of the deceased is taken as Rs. 3000/-, the annual earning can safely be assessed at Rs. 36,000/-. If 1/3rd of the same is deducted the annual dependency comes to Rs. 24000/-. The deceased was aged 25 years who left behind him his widow and three minor children. If multiplier of 15 is taken, the compensation amount comes to Rs. 3,60,000/-. In our considered opinion, therefore the compensation to be paid to the claimants shall not be less than Rs. 3,50,000/-. The amount of compensation assessed by the tribunal therefore cannot be sustained in law.

This is, therefore, allowed and the amount of compensation is enhanced to Rs. 3,50,000/-. It is clarified that the other observations and directions recorded by the tribunal are not disturbed.

D.K. Sinha, J.

8. I agree.