(2011) 09 PAT CK 0011

In the Patna High Court

Case No : Misc. Appeal No. 2 of 2003

Manju Devi and Others APPELLANT

Vs

M/s Muzaffarpur Motor Transport Co-operative Society, Muzaffarpur, Mohalla-Implichatti, P.S.-Town, District-Muzaffarpur and Another RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 09 PAT CK 0011

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Shri Rajesh Kumar, Learned Counsel for the Appellants and Shri Durgesh Kumar Singh, Learned Counsel appearing on behalf of Respondent No. 2/ United India Insurance Company Ltd. The present appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) was preferred long back in the year 2003 against judgment dated 13.8.2002 and award dated 24.8.2002 passed by the Additional Motor Vehicle Accident Claim Tribunal-IV, Muzaffarpur (hereinafter referred to as the ''Claim Tribunal'' in Claim Case No. 157 of 1997, whereby the Claim Tribunal taking the income of the deceased as notional income had directed the Respondent No. 2, United India Insurance Company Ltd. to pay a total compensation amount of Rs. 1,89,500/-. It was further directed to deduct Rs. 50,000/-, which was earlier paid as interim compensation. The compensation amount was directed to be paid with interest at the rate of 9% per annum from the date o1 filing of the case till the realization of the amount in favour of the claimants. The Appellants before this Court are claimants in whose favour compensation amount was directed to be paid. It has been submitted by Shri Durgesh Kumar Singh, Learned Counsel for the insurer/ Respondent No. 2 that as per direction of the Claim Tribunal, compensation amount has already been paid. The Appellants have questioned the impugned judgment only on the point of amount of compensation.

2. Short fact of the case is that the husband of Appellant No. 1 and father of Appellant Nos. 2 and 3 on 13.6.1997 was dashed by a Bus bearing Registration No. BR-06A-0051 due to rash and negligent driving of the Bus. In the said accident, he died on the spot itself. After the accident, an F.I.R. vide Gaighat P.S. Case No. 91 of 1997 was registered on the same day and subsequently, charge-sheet was submitted. Thereafter, the Appellants filed Claim Case No. 157 of 1997 under the Motor Vehicles Act for compensation. Before the Claim Tribunal, the claimants proved their case and as such the claim was allowed. However, the question of income of deceased, as per Learned Counsel for the Appellants was not considered in accordance with law. It has been argued that the deceased was a Government employee and he was a police constable at the time of death. Before the Claim Tribunal, pay certificate issued by the competent authority was brought on record, which was marked as Ext.-1. However, before the Claim Tribunal since dispute were raised by Learned Counsel for the Insurance Company on trivial ground of two different pay scales in the certificate, the learned Claim Tribunal preferred to take into account the notional income and considered the income of Rs. 1,500/- per month of the deceased, the learned Claim Tribunal proceeded on the basis of notional. income and directed for payment of the compensation amount as indicated above.

3. Aggrieved with the compensation amount, the Appellants had preferred the present appeal. However, appeal stood dismissed on 17.12.2003 due to non-compliance of the peremptory order. Subsequently, a restoration petition was filed, which too, stood dismissed by this Court on 7.3.2006. Aggrieved with the rejection of the appeal on technicality, the Appellants approached the Apex Court by filing an appeal vide Civil Appeal No. 674 of 2011. The appeal was allowed on 10th January, 2011 and the order dated 7.3.2006 passed by this Court in M.J.C. No. 104 of 2006 was set aside. The Apex Court further directed the parties to appear before this Court. Accordingly, the restoration petition i.e. M.J.C. No. 104 of 2006 was restored to its file and finally, by order dated 20.4.2011, restoration was allowed.

4. Learned Counsel for the Appellants has argued that once salary certificate was already brought on record, the learned Claim Tribunal was not required to proceed on the basis of notional income and as such the learned Tribunal has committed serious error.

5. Shri Durgesh Kumar Singh, Learned Counsel for the Respondent No. 2 is not in a position to dispute the proposition that if there is documentary evidence in support of the income of the deceased, there was no point to consider the notional income.

6. In view of the facts and circumstances, the court is of the opinion that the appeal is required to be allowed by calculating the compensation in terms of Ext.-1 according to which salary of the deceased, per month was Rs. 4,177/-.

Accordingly, the yearly income of the deceased comes to Rs. 50,124/-. After deducting one third from the said income, the yearly income comes to Rs. 33,416/-. Since the deceased at the time of death was 40 years old, in view of Schedule-II of the M.V. Act, the multiplier would be 16 years and as such the total compensation amount comes to Rs. 5,34,656/-. Accordingly, the compensation amount is hereby enhanced to Rs. 5,34,656/-.

7. In view of enhancement of compensation amount to Rs. 5,34,656/-, the Respondent No. 2/Insurer of the offending vehicle is directed to pay the aforesaid compensation amount after deducting the amount of Rs. 1,89,500/-, which has already been paid by the Respondent No. 2 in compliance with the impugned judgment and award. The remaining amount shall be paid alongwith interest at the rate of 9% per annum.

8. Learned Counsel for the Appellants has agreed to claim interest on the remaining amount from the date of filing of the claim petition till 17.12.2003. The entire amount is to be paid within a period of two months from today. With above observation and direction, the appeal stands allowed.

