(2016) 04 JH CK 0192

In the Jharkhand High Court

Case No : M.A. No. 179 of 2012

Md. Asadullah APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Citation : (2016) 3 JCR 274

Hon'ble Judges : Amitav K. Gupta, J.

Bench : Single Bench

Advocate : Mr. Shahid Khan and Md. Razaullah Ansari, Advocates, for the Appellant; Mr. Pratyush Kumar, C.G.C, for the Respondent

Final Decision : Allowed

Judgement

Mr. Amitav K. Gupta, J.—This appeal has been preferred for enhancement of the compensation award of Rs.Rs. 5,39,600/- by order dated 16.06.2012, in Claim case no. No. 159/2005, passed by the Vth, District Judge-cum-Presiding Officer, Motor Vehicle Accident Claims Tribunal, Hazaribagh (hereinafter to be referred as Tribunal) to be paid to the claimants/appellants by the respondent/ opposite party no. 1.

2. Mr. Shahid Khan, learned counsel for the appellant has submitted that the learned Tribunal has committed an error in law while computing the compensation as it has assessed the salary payable to the deceased at Rs. 5,589/- rounded off to Rs. 6,000/- on the basis of Exbt.-2(certified copy of salary register). It is pointed out by the learned counsel that Exbt.-1 is the salary certificate issued by the Headmaster, wherein it has been mentioned that deceased''s salary was Rs. 9,251/- for the month of April, 2003. It is urged that the Tribunal has failed to appreciate that Exbt.-2 was with respect to only 18 days'' salary and not for the entire month. It is further submitted that the deceased was a school teacher in a Government school and she was aged 38 years hence the Tribunal should have added 50% as future prospects for assessing the income of the deceased on the basis of the salary of April, 2003. It

is urged that the Tribunal has committed an error in law by deducting ?rd of the total income towards the expenses the deceased would have incurred on herself. That the Tribunal has failed to appreciate that the deceased was survived by 5 dependents and as per the ratio laid down in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and anr. reported in (2009) 6 SCC 121, when the dependents are 4 and above ?th of the income should have been deducted towards the expenses the deceased would have spent on herself. A meager amount of Rs. 2,000/- has been provided towards funeral expenses and loss of consortium or loss of love and affection and no interest has been awarded by the Tribunal.

3. Mr. Pratyush Kumar, learned counsel for the respondent has submitted that in the claim application the claimants have stated that the deceased was drawing a salary of Rs. 8,913/- and the Tribunal has computed the compensation on the basis of Ext.-2 filed by the claimants. That medical allowances or conveyance allowances, etc. are liable to be deducted. It is further submitted that the ratio laid down in the case of Sarla Verma (supra) considering the age of the deceased the multiplier applicable is 15 but the Tribunal has adopted a liberal view by applying multiplier of 16. It is urged that the claimants are not entitled to interest from the date of application as the same has been considered by the Tribunal while adjudicating issue no.4 and findings are in accordance with law, but interest has been awarded at the rate of 9% which is on the higher side it should be reduced to 6% per annum.

4. Heard. On perusal of the impugned order and evidence on record, it is evident that the deceased was a Government school teacher and she died due to the accident at the age of 38 years. The salary certificate is Exbt.-1, wherein the gross salary of the deceased has been mentioned as Rs. 9,252/- including house rent and medical allowance is fixed at Rs. 50/-. After deducting the medical allowance from the salary the monthly salary of the deceased is assessed at Rs. 9,200/-. The Tribunal has committed an error in assessing the salary of the deceased at Rs. 6,000/- in terms of Exbt.-2, which was with respect to 18 days'' salary. Taking Rs. 9,200/- as the monthly income the annual income of the deceased comes to 9200 x 12=Rs. 1,10,400/-. Since the deceased died at age of 38 years, 50% should have been added as future prospects in view of the ratio laid down in the case of Sarla Verma (supra) which the Tribunal has failed to consider. Accordingly when 50% of the annual income of Rs. 1,10,400/- is added, as future prospects, the gross annual income is assessed at Rs. 1,10,400+55,200=Rs. 1,65,600/-.

The Tribunal has erred in applying the multiplier of 16 instead of 15 as per the ratio laid down in the case of Sarla Verma(supra), therefore, on applying the multiplier of 15 the total income is assessed 1,65,600 x 15=Rs. 24,84,000/-. After deducting 10% towards the income tax, the annual income is computed at 24,84,000-2,48,400=Rs. 22,35,600/-.

The deceased is survived by four dependents hence, ?th of the total amount instead of ?rd should have been deducted by the Tribunal as the amount the deceased would have spent on herself. Thus, when ?th is deducted from Rs. 22,35,600/- the loss of dependency and compensation payable is computed at 22,35,600-5,58,900=Rs. 16,76,700/-.

A lump sum amount of Rs. 75,000/- is allowed towards loss of consortium, loss of love and affection and funeral expenses, thus the total compensation payable is computed at Rs. 16,76,700+75,000=Rs. 17,51,700/-, with interest @ 9% payable from the date of the order of the trial court till realisation of the amount.

5. The respondent-Union of India is directed to pay the aforesaid amount by the ensuing Lok Adalat, i.e., on 14.5.2016 and if not paid by that date then they should pay the said amount by 15.07.2016. The amount with interest @ 9% should be deposited before the Member Secretary, Jharkhand State Legal Services Authority, Nyay Sadad, (JHALSA), Ranchi.

6. With the said direction and observations the award/judgment of the Tribunal is set aside and modified to the extent as noted above.

7. In the result the appeal is hereby allowed.

