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(2010) 01 CHH CK 0019

In the Chhattisgarh High Court

Case No : M.A. No. 915 of 2004

Meena Sarkar and Others APPELLANT

Vs

National Insurance Co. and Others RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A(3), 166

Citation : (2010) 1 MPJR 99

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

Bench : Full Bench

Judgement

Rajeev Gupta, C.J.

This is claimants'' appeal for enhancement of the compensation awarded by Third Additional Motor Accidents Claims Tribunal, Surajpur, District Surguja (for short ''the Tribunal'') vide award dated 24.07.2004, passed in claim case No. 40/2003.

As against the compensation of Rs. 19,60,000/- claimed by the appellants/ claimants, unfortunate widow and minor children of deceased Arvind Kumar Sarkar, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 12.06.2003, the Tribunal awarded a total sum of Rs. 3,11,400/- as compensation along with interest @ 9 % per annum from the date of filing of the claim petition till the date of actual payment.

The Tribunal on a close scrutiny of the evidence led before it held that deceased Arvind Kumar Sarkar died on account of the injuries sustained by him in the motor accident on 12.06.2003; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Maruti Van; and as the offending vehicle Maruti Van on the date of the accident was insured 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.70/- per day and Rs. 2,100/- per month. By deducting 1/3rd of Rs. 2,100/- per month, towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 1,400/- per month and Rs. 16,800/- per annum. By multiplying the annual dependency of Rs. 16,800/- with the multiplier of 18, the compensation was worked out to Rs. 3,02,400/-. By awarding further sum of Rs. 9,000/- under other permissible heads, the Tribunal awarded a total sum of Rs. 3,11,400/- as compensation to the claimants for the death of deceased Arvind Kumar Sarkar in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 3,11,400/- @ 9 % per annum from the date of filing of the claim petition till the date of actual payment.

Smt. Hamida Siddique, learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants'' evidence about the income of the deceased and in assessing his income at Rs. 70/- per day and Rs. 2,100/- per month only; and in awarding low compensation of Rs. 3,11,400/-only.

Shri Raj Awasthi, learned counsel for the respondent No. 1 - the National Insurance Company Limited, on the other hand, supported the impugned award and contended that as the claimants could not establish the income of the deceased as pleaded by them, the compensation of Rs. 3,11,400/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

As the respondents have not filed any appeal against the award, the above findings recorded by the Tribunal have now attained finality. That apart, these findings are not under challenge before us in this appeal. We, therefore, affirm the above findings recorded by the Tribunal.

True, the claimants pleaded that deceased Arvind Kumar Sarkar was getting Rs. 10,000/- per month as salary as Manager in PRA Company. In addition to the above salary, the deceased used to earn Rs. 5,000/- per month as petty contractor. To establish the above income of the deceased, the claimants examined AW-2 Suraj Agrawal before the Tribunal. AW-2 Suraj Agrawal is neither proprietor/partner nor a Manager of PRA Company. On his own admission, he is a petty contractor executing petty contracts under PRA Company. We, therefore, do not find any fault in the approach of the Tribunal in discarding the evidence of AW-2 Suraj Agrawal about the income of the deceased.

Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 70/- per day and Rs. 2,100/- per month in the year 2003 is certainly on the lower side and requires reconsideration.

Deceased Arvind Kumar Sarkar was aged about 40 years on the date of the accident. The Tribunal while discarding the claimants'' evidence about the income of the deceased ought to have assessed his income on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act.

Section 163-A of the Act where-under the Second Schedule was introduced in the year 1994 reads as follows:

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[163A. Special provisions as to payment of compensation on structure formula basis - (1) Notwithstanding anything contained in this Act or in any other law of the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation - For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

The above quoted Sub-section (3) of Section 163-A of the Act mandated the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

As the Central Government has filed in amending the Second Schedule as provided in Sub-section (3) of Section 163-A of the Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

Now reverting to the present case, the accident wherein deceased Arvind Kumar Sarkar lost his life took place in the year 2003. If the increase in the prices of the essential commodities and the cost of living between the year 1994 and the year 2003 are taken into consideration, the national income of Rs. 15,000/- prescribed in the Second Schedule in the year 1994 would certainly come to Rs. 36,000/- per annum in the year 2003. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 36,000/- per annum.

Considering that there were only two adult members in the family depending on the income of the deceased and remaining three members were minor children aged between 10-15 years, we are of the opinion that deduction of usual 1-3rd of the income of the deceased would be appropriate in the present case. By deducting the usual 1/3rd of Rs. 36,000/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs. 24,000/- per annum.

Considering that deceased Arvind Kumar Sarkar was aged about 40 year on the date of the accident, multiplier of 15 would be appropriate in the present case.

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By multiplying the annual dependency of Rs. 24,000/- with the multiplier of 15, the compensation works out to Rs. 3,60,000/-. The claimants are further entitled to receive a sum of Rs. 5,000/- towards funeral expenses; Rs. 5,000/- for loss of consortium to the widow; and Rs. 5,000/- for loss of estate. The claimants, thus, become entitled to receive a total sum of Rs. 3,75,000/- as compensation for the death of deceased Arvind Kumar Sarkar in the motor accident.

Learned counsel for the parties submitted that with a view to avoid any possible dispute between the parties about the period for which the claimants are entitled to receive interest on the enhanced amount of compensation, the amount of interest on the enhanced amount of compensation may be quantified in this appeal itself.

Considering all the relevant factors including the delay in disposal of the claim petition and the present appeal and the fact that Insurance Company alone is not to be blamed for the entire delay in the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs. 63,600/-at Rs. 6,400/-.

For the foregoing reasons, the appeal filed by the appellants-claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 3,11,400/- awarded by the Tribunal is enhanced to Rs. 3,75,000/- with further quantified amount of interest of Rs. 6,400/- on the enhanced amount of compensation of Rs. 63,600/-.

Respondent No. 1 The National Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 70,000/- (Rs. 63,600 towards enhanced amount of compensation + Rs. 6,400/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 63,600/-) before the concerning Claims Tribunal.

No order as costs.

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