(2014) 04 JH CK 0073

In the Jharkhand High Court

Case No : Misc. Appeal No. 254 of 2007 and Cross Appeal No. 8 of 2008

Mosemat Darbi Devi — APPELLANT

Vs

Renu Kothari
 United India Insurance Company Ltd. Vs Most. Darbi Devi — RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 163, 163(A)

Citation : (2014) 2 JLJR 410

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : Shahid Khan, Advocate for the Appellant; D.C. Ghose, Advocate for the Respondent

Judgement

Dhrub Narayan Upadhyay, J.—These appeals have been preferred against the judgment and award dated 5.5.2007 passed by learned 1st Addl. Claim Tribunal, Hazaribagh, in connection with Claim Case No. 29 of 2002 whereby a total sum of Rs. 8,85,628/- has been awarded as compensation in lieu of the death of Suraj Razak. Out of total compensation amount, Respondent No. 2/Insurance Company (Appellant in Cross Appeal) has been directed to pay 75% of the total awarded amount i.e. Rs. 6,64,221/- and the Respondent No. 2 has been directed to pay compensation amount within 30 days from the date of order failing which claimants will be entitled to receive the awarded amount alongwith penal interest at the rate of 6% per annum. Further, directions have been given with regard to distribution and deposit of the awarded amount in the bank. The facts in brief is that deceased Suraj Razak was traveling on a Commander Jeep bearing No. BR-14P-4000. When the jeep reached near Padma O.P. at Ranchi-Patna National Highway, one L.P. Truck bearing No. AP-05X-2479, coming from opposite direction i.e. from the side of Hazaribagh, caused dash to the Commander Jeep, as a result Suraj Razak and other occupants of the Jeep sustained injuries. The deceased Suraj Razak was removed to Hospital where he was declared dead. It is contended that the deceased at the time of his death, was aged about 54 years and he was the Inspector of Police, Wireless, posted at Hazaribagh. At the relevant time, the deceased was drawing monthly salary of Rs. 17,287/-.

2. Learned counsel for the claimant assailed the impugned order on the ground that the learned Tribunal has wrongly reduced the salary for the purpose of calculating annual income of the deceased. The Tribunal has assessed the income of the deceased which he would have got during tenure of his service and the amount of pension which he might be getting after his retirement. This is not the way to calculate the income of the deceased and therefore, the tribunal has committed gross error. In course of arguments, learned counsel has submitted that besides the compensation amount already paid to the claimant, if additional jump sum amount of Rs. 5,00,000/- shall be paid as enhanced compensation, the claimant shall be satisfied.

3. Learned counsel, appearing for the Respondent No. 2-Insurance Company, who is also appellant in Cross Appeal No. 8 of 2008, has raised objection but failed to satisfy and justify the amount of compensation Calculated by the Tribunal.

4. I have gone through the impugned judgment from which it appears that the Tribunal has done futile exercise to calculate the amount of compensation in the manner which is not in accordance with Schedule appended u/s 163(A) of the M.V. Act. The correct procedure of calculating the just and reasonable compensation, if the Tribunal would have taken help of Schedule u/s 163 of the M.V. Act and he would have assessed the annual income of the deceased on the basis of his monthly salary and considering the age of the deceased, suitable multiplier would have been chosen.

5. Since the appellant has agreed to receive additional lump sum compensation of Rs. 5,00,000/-, it is not needed to do exercise to calculate the just and reasonable compensation which is required to be paid to the claimant.

6. In the result, the Respondent No. 2/Insurance Company (Appellant in Cross Appeal No. 8 of 2008) is hereby directed to pay lump sum additional compensation of Rs. 5,00,000/- to the claimant within 60 days from the date of this order and the claimant shall receive additional compensation of Rs. 5,00,000/- on her behalf and also on behalf of her sons namely, Nagendra Kumar and Sadan Kumar. With this modification in the impugned judgment and award dated 5.5.2007 passed by learned 1st Addl. Claim Tribunal, Hazaribagh, in connection with Claim Case No. 29 of 2002, M.A. No. 254 of 2007 is partly allowed, whereas the Cross Appeal No. 8 of 2008 stands dismissed.

