(2009) 11 JH CK 0022

In the Jharkhand High Court

Most. Sudamiya and Others APPELLANT

Vs

The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0022

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. When the appeal was called out, learned Counsel appearing for the claimants and the Insurance Company requested this court to hear and dispose of the appeal today at the stage of admission and hence with their consent this appeal is being heard and disposed of by passing the following order.

2. The claimants are the widow and four minor children aged about 12, 8, 5 and 2 years. They have filed a claim case for grant of compensation for the death of one, Birju Mahto who while driving the truck died in an accident. The facts not in dispute is that the deceased was driving the truck bearing registration No. UP-70 G 9495. While the deceased was driving the truck all of a sudden another truck bearing registration No. UP 78-N/ 4210 came and dashed the truck which resulted in death of the deceased. Insurer of both the trucks is New India Assurance Co. Limited being represented by Mr. Manish Kumar.

3. Evidence was led by the claimants that the deceased was getting Rs. 5000/- as salary. The evidence with regard to salary has neither been disputed or controverted by insurance company or by owner of the truck. While deciding the liability the Tribunal recorded the following finding:

The present accident in question arose due to head on collision of the two vehicles and hence, the liability will be shared half and half by the two vehicles. The deceased being driver of one of the two vehicles involved in this case of accident can be categorized at 3rd person in respect of the vehicle of which he was not the driver. As it has come in evidence that both the vehicles were equally responsible for happening of motor vehicle accident, the legal representative of the deceased driver as per provision of law cannot claim compensation on account of each of the deceased driver who died due to accident caused by rash and negligent driving of the deceased himself as driver of one of the vehicles involved in this claim case. The provision of law is that the legal representative of a deceased can claim compensation either under provisions of the Motor Vehicle Act or under the provisions of the Workmen''s Compensation Act. The deceased driver of the unfortunate vehicle bearing registration No. UP-70G 9495 was an employee or agent of the O.P. No. 2 who died in a motor vehicle accident in course of his employment as a driver of the said unfortunate vehicle. So, the claimants being legal representatives of the deceased driver are entitled for compensation on account of death of the deceased driver against the O.P. No. 2, the owner of the unfortunate vehicle. The relationship of the employer and employee has been established. The unfortunate vehicle bearing No. UP 70 G/9495 belonging to O.P. No. 2 was admittedly insured with the O.P. No. 3 on the relevant date of accident and hence, the O.P. No. 3 being insurer has to indemnify the insured owner of the unfortunate vehicle.

4. Prima facie, we are of the view that the order of the Tribunal and the finding recorded therein are absolutely erroneous in law. As noticed above evidence was led by the claimants that driver was getting Rs. 5000/- as monthly salary. In absence of any contrary evidence the Tribunal has grossly erred in law in taking the help of Minimum Wages Act. One cannot disbelieve the salary of the deceased alleged by the claimants who was a driver in a truck. However, no documentary evidence was led by the appellants-claimants in support of earning of the deceased.

5. Learned Counsel appearing for the claimants-appellants submitted that in absence of any documentary evidence the monthly earning of the deceased cannot and shall not be less than Rs. 3000/-per month and the Tribunal ought to have taken this amount for the purpose of calculating the compensation.

6. We find force in the submission of the learned Counsel for the appellants.

7. Mr. Manish Kumar, learned Counsel appearing for the Insurance Company very fairly submitted that in absence of any reliable evidence, as per the decision of the Supreme Court, compensation amount can be assessed by taking a minimum salary of Rs. 3000/-.

8. In the background of the aforesaid discussion, we held that the deceased-driver must have been getting Rs. 3000/- as salary. If this amount is taken, the annual dependency comes to Rs. 24,000/-. Taking multiplier of 15, the net compensation amount comes to Rs. 3,60000/-. Admittedly both the vehicles were insured with the respondent-insurance company. Hence, in any case, even if it is presumed that the accident took place because of the negligence of the two vehicles, the Insurance Company being the insurer of both the vehicle, is

liable to pay the compensation amount.

9. We, therefore, allow this appeal and the compensation amount awarded by the Tribunal is enhanced to Rs. 3,60,000/-

10. Needless to say that that the enhanced compensation of Rs. 3,60,000/- shall be payable inclusive of interest.

