

(2020) 01 JH CK 0188

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 141 Of 2019

M/S Icici Lombard Motor Insurance

APPELLANT

Vs

Priyanka Kumari And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 427

Citation : (2020) 01 JH CK 0188

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Bibhash Sinha

Final Decision : Dismissed

Judgement

1. The appellant has preferred this appeal against the award dated 31.07.2018 passed in Motor Accident Claim Case No.56/09 passed by learned

Presiding Officer, Motor Vehicle Claims Tribunal, Hazaribagh whereby the claimants have been awarded compensation to the tune of Rs.9,77,200/-

along with interest @6% per annum from the date of order when the applicant was allowed to adduce evidence i.e. on 24.08.2015 till its payment

within 30 days from the order passed failing which the interest would be 9% per annum after 30 days of the order till the date of final realization.

2. Learned counsel for the appellant-Insurance Company has assailed the impugned award on the ground that the income of the deceased has been

wrongly considered by the learned Tribunal as Rs.4500/- considering Rs.150/-per day but have not taken notice with regard to four Sundays and other

holidays in a month, as such, computation of income on the basis of Rs.4500/-is bad in law, in support thereof learned counsel for the appellant has

relied upon judgment as reported in (2010) 1 JCR 472; Sudamiya & Ors. vs.

National Insurance Company Ltd. whereby the Hon'ble Division Bench of this Court, has considered the income of the deceased driver to be Rs.3000/- per month in absence of any documentary evidence adduced by the claimant.

Learned counsel for the appellant has further submitted that there is a delay of 127 days in preferring the appeal, for condonation of the same I.A.

No.2741/2019 has been preferred, as such, this Court may issue notice, as the appellant has a very good case.

Learned counsel for the appellant has further submitted that there is no provision of penal interest @9% and as such, the same may be reduced.

3. Heard learned counsel for the appellant and perused the material brought on record including the impugned order. It appears that deceased Ravi

Kant Mishra @Raja Mishra was travelling from his house to Tapin by CD DAWN motorcycle bearing registration no.JH-02D-9031 on 06.06.2009 at

around between 10.15 am and 10.30 am. Suddenly a Dumper bearing no.JH-02F-4048 being driven by its driver rashly and negligently in high speed

violently dashed against the motorcycle, as a result of which the deceased fell down and received severe injuries in his head. He was immediately

taken to Shirmaik Hospital, CCL, Prem Nagar, where from he was referred to Kendriya Hospital, Naisarai but on his way to referred hospital in Kuju

area, the injured succumbed to the injuries.

The police registered Charhi P.S. Case No.11/2009 dated 06.06.2009 under sections 279/304(A)/427 of the IPC against the driver of the offending

vehicle Dumper. After investigation the police has submitted chargesheet against driver of Dumper No.JH-02F-4048 namely Mahendra Bhuiyan

holding him prima-facie culpable under sections 279, 304A of IPC.

The Claim application was preferred by the wife and daughter of the deceased claiming that deceased was a self-employed person, used to work on

contract as he was an Electric Mistry having earning of Rs.10,000/- to Rs.12,000/- per month and the deceased was aged about 23 years at the time

of his accidental death.

4. Learned counsel for the appellant has relied upon judgment passed by the Division Bench of this Court in the case of Sudamiya (supra) but in the

recent judgment passed by the Apex Court in the case of Chameli Devi vs. Jivrail Mian & Ors.; 2019 (4) TAC 724 (SC) the Apex Court has held that

it is very difficult to have documentary evidence of income of a carpenter and considered the same as income of Rs.5000/- and awarded the

compensation. The principle laid down by the Apex Court in the recent judgment is being followed here as it is very difficult to have income of an

Electric Mistry and as such, considering the same, this Court feels that the Tribunal has not taken excess income into consideration but has only taken

Rs.4500/- into consideration. Even in the Government notification issued by Department of Labour, the minimum income notified in the year, 2010 is

Rs.290/- per day for a skilled labour. The Electric Mistry is a skilled labour. In that view of the matter, this Court feels that the Tribunal has not taken

excess amount as consideration for the monthly income and as such, in absence of any appeal preferred by the claimants, this Court is not looking into

the same for enhancement but considering the compensation to be just and fair, this Court is not inclined to reduce the same.

5. Accordingly, the income considered by the Tribunal is found fair and just compensation in view of judgment passed by Apex Court in the case of

Chameli Devi (supra).

6. This Court has also considered the further submissions of learned counsel of the Insurance Company with respect to interest but not inclined to

reduce the penal interest @9% after taking the holistic view of the matter, as the Tribunal has only granted interest @6% per annum from the date of

order when the applicant was allowed to adduce evidence i.e. on 24.08.2015 till its payment within 30 days from the order passed failing which the

interest would be 9% per annum after 30 days of the order till the date of final realization has been awarded by the learned Tribunal. The Apex Court

in the case of Dharmpal and Sons vs. UP State Road Transport Corporation; 2008 (4) JCR 79 S Chas held that the interest ought to have been

@7.5% per annum from the date of filing of the application or the prevalent bank rate of interest. In such view of the matter, this Court consider the

interest to be just and fair is not inclined to interfere with.

As such, the appeal being devoid of any merit is hereby dismissed as no interference is required by this Court. Since the appeal has been decided on

merit it would not be proper to pass any order so far as I.A. No. 2741 of 2019 is concerned.

Accordingly, the same is hereby closed.

7. The Registrar General of this Court is directed to refund/reimburse the statutory amount of Rs. 25,000/- deposited at the time of filing of the appeal within a period of four weeks from the date of filing of the requisition by learned counsel for the appellant.