
(2020) 01 JH CK 0243

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 35, 156 Of 2017

National Insurance Co. Ltd And Ors

APPELLANT

Vs

Ghasiram Gope And Ors

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 33

Citation : (2020) 01 JH CK 0243

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Alok Lal, Anjani Kumar, Anjani Kumar, Arun Kumar, Santosh Kumar

Final Decision : Dismissed

Judgement

1. The National Insurance Company Limited has assailed the impugned award dated 31.08.2016 in Motor Accident Claim Case No.8/11 passed by

learned District Judge-I-cum-MACT Judge, West Singhbhum at Chaibasa awarding compensation to the claimants to the tune of Rs.2,78,500/- along

with interest @6% per annum from the date of filing of the claim application till the date of realisation to the claimants to be paid within 60 days of this

order and further given liberty to the O.P. No.3 National Insurance Company Limited to recover the entire compensation amount from O.P. No.1

Sanjeet Prajapati, Owner of the offending vehicle as on the date of occurrence O.P. No.2 (driver) had no valid and effective license. The contributory

negligence and computation of Award have been considered by the Tribunal.

2. The claimants have also preferred an appeal vide M.A. No.156/2017 for enhancement of the compensation amount against the same impugned

award on the ground that the Tribunal has wrongly deducted 50% towards personal and living expenses of the deceased as he was bachelor but

number of dependent family members are 2 to 3, as such, 1/3rd should have been deducted instead of 50%.

3. Learned counsel for the claimants has further submitted that under the conventional head less amount has been paid by the Tribunal which ought to

have been Rs.70,000/- in view of the judgment of Apex Court in the case of National Insurance Company Limited vs. Pranay Sethi & Ors. as

reported in (2017) 16 SCC 680. Learned counsel for the claimants has further submitted that the interest has been awarded @6% which ought to

have been 7.5% from the date of filing of the application in view of the judgment of Apex Court in the case of Dharmpal and Sons vs. UP State Road

Transport Corporation; 2008 (4) JCR 79 SC, as such, necessary enhancement may be made.

4. Learned counsel for the Owner-respondent no.4 in M.A. No.35/2017 has appeared in this case and has submitted that though the owner has not

preferred any cross appeal nor cross-objection or any appeal against the impugned award but even then this court of appeal may decide in the interest

of the owner by setting aside part of the award whereby the tribunal has given right to recover in favour of the insurance company against the owner.

In this context learned counsel for the respondent-owner has relied upon Order 41 Rule 33 CPC since both the appeals are arising out of a common

award, one preferred by the Insurance Company and the other preferred by the claimants.

5. So far the case of the insurance company is concerned, in absence of any legal material to hold that there was contributory negligence on the part

of the another vehicle i.e. motorcycle bearing registration no.JH 06B 6272 and the same has also not been chargesheeted by the police, the ground

taken by the Insurance Company is of no help.

6. After hearing learned counsels for the parties and on perusal of the record, it appears that the Tribunal has rightly held on co-joint reading of

Exhibit-A and Exhibit-D i.e. verification of the driving license no. 243220/06 issued from the office of the District Transport Officer, Chaibasa, West

Singhbhum and the extract of the driving license of Ramu Khandait, O.P. No.2, that on 19.10.2009 the driver of the offending vehicle, O.P. No.2 had

no valid and effective driving license, as such the learned Tribunal has rightly gave right to recover in favour of the insurance company after satisfying

the award from the owner of the offending vehicle.

So far the computation of compensation is concerned, learned counsel for the insurance company Mr. Alok Lal has relied upon the assessment of the

age of the deceased on the basis of the post-mortem report where the deceased was assessed to be 28 years and as such, submitted that the multiplier

which has been used is wrong in view of the judgment passed by the Apex Court in the case of Sarla Verma Vs. Delhi Transport Company as

reported in (2009) 6 SCC 121.

7. This Court has perused the impugned award. It appears that consistent evidence which has been brought on record by the claimants is that the

deceased Rajesh Gope was aged about 25 years and the assessment of the age on the basis of post-mortem report cannot be the exact age of the

victim. It is an assessment made by the doctor which has possibility of margin of error of +/- two years, as such, considering the same, this Court is

not inclined to disturb the finding recorded by the learned tribunal that deceased was aged about 25 years. Therefore, multiplier of 18 has been

correctly applied in this case. Accordingly, the Miscellaneous Appeal i.e. M.A. No.35/17 preferred by the Insurance Company is dismissed.

So far the M.A. No.156/2017 preferred by the claimants is concerned, it is true that the deceased was a bachelor, as such, in view of the judgment of

Sarla Verma (supra), 50% deduction has been rightly made by the learned Tribunal which does not require any interference by this Court.

So far the conventional head is concerned, it is true from perusal of paragraph-12 of the impugned award that instead of Rs.70,000/- contrary to the judgment of Pranay Sethi, the Tribunal has only granted Rs.2,000/- as funeral expenses and Rs.2,500/- as loss of estate which ought to have been

Rs.15,000/- each and no amount has been awarded so far loss of consortium is concerned. Accordingly, instead of Rs.4,500/- the claimants are

entitled for Rs.70,000/-. As such, there is an enhancement of Rs.65,500/-.

So far interest is concerned, counsel for the claimants Mr. Anjani Kumar has rightly pointed out that Tribunal has awarded 6% interest from the date

of filing of the application till its realisation which ought to have been @7.5% in view of the judgment of Hon'ble Apex Court in Dharmpal and Sons

vs. UP State Road Transport Corporation; 2008 (4) JCR 79 SC.

8. Accordingly, the award is modified by adding Rs.65,500/- in the impugned

award of Rs.2,78,500/- because of enhancement made under the conventional head. As such, now the enhanced compensation amount is Rs.3,44,000/- along with interest @7.5% per annum from the date of application till its realisation.

Accordingly, Miscellaneous Appeal No.156/2017 is allowed.

9. So far objection raised by the learned counsel for the owner and driver of the offending vehicle is concerned, the same is not sustainable as in

absence of any cross-objection, cross-appeal or any appeal by the Insurance Company, such objection cannot be taken by the High Court while sitting

in appeal under Order 41 Rule 33 CPC. The issue has already been decided by the Apex Court in the case of *Ranjana Prakash & Ors. vs. Divisional*

Manager & Anr.; (2011) 14 SCC 639.

10. Accordingly, the objection raised by the learned counsel for the owner and driver of offending vehicle is rejected.

11. 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.