(2011) 03 CHH CK 0005

In the Chhattisgarh High Court

Case No : M.A. No. 1927 of 1999

National Insurance Co. Ltd APPELLANT

Vs

Gautamchand Lunia and Others RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2011) 4 TAC 633

Hon'ble Judges : Prashant Kumar Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the appellant/ Insurance Company on the ground of quantum against the impugned award dated 29th July, 1999, passed by the Second Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 115/97, awarding a sum of Rs. 7,01,992 alongwith interest @ 12% per annum, holding the appellant/Insurance Company as liable to pay the amount of compensation.

2. We have heard learned Counsel appearing for the parties and perused the lower Court record as well as the findings given in the impugned award.

3. Brief facts, in nutshell, are that on 15th February, 1997 Vijay Laxmi, Kamla Bai and Akheraj Lunia were going to Durg from Rajnandgaon by Fiat Car, bearing registration No. MP 23-L/2723 and the care was being driven by Dev Prakash. As soon as the car reached in front of Sangam Fuel Petrol Pump, Pulgaon, a Truck, bearing registration No. MP. 23-DA/ 1291, being driven by the non-applicant No. 1 (Babulal) in a rash and negligent manner hit the car from the opposite direction. In that accident Vijay Laxmi, Kamla Bai and Dev Pradash died. The offence was registered in the Police Station-Pulgaon against the non-applicant No. 1 at Crime No. 51/97 u/s 304-A of the Indian Penal Code.

4. The claimants, being husband and three children of the deceased (Vijay Laxmi Lunia), filed a claim case u/s 166 of the Motor Vehicles Act, 1988 for award of compensation under various heads.

5. The appellant was granted the permission u/s 170 of the Motor Vehicles Act, 1988.

6. Learned Claims Tribunal having regard to the facts situation and the evidence on record assessed the yearly income of the deceased Vijay Laxmi Lunia as Rs. 85,000/-. After deducting l/3rd i.e. Rs. 28,333/- towards personal and living expenses, the yearly-dependency was assessed as Rs. 56,666/-. Taking into consideration the age of the deceased between the age group of 40 to 45 the multiplier of 12 was applied and thus awarded Rs. 6,79,992/- as compensation towards loss of dependency. Under the conventional heads the Claims Tribunal awarded Rs. 5,000/- to the claimants No. 1 husband towards consortium, Rs. 15,000/- to the claimant Nos. 2 to 4/children towards loss of love and affection and Rs. 2,000/-towards funeral expenses. Thus, awarded a total compensation of Rs. 7,01,992.

7. It is evident that the Claims Tribunal has assessed the income of the deceased on the basis of the income tax return filed on behalf of the deceased. On perusal of the record we have found that till the date of death i.e. 15th February, 1997 no income tax return was filed. Though the income tax returns were filed for the earlier years but all the returns were filed onwards the month of March, 1997 i.e. the dated after the death of the deceased, which can be said to be after-thought, just to get higher compensation. It may also be noticed that the claim petition was filed on 7th May, 1997 after filing the income tax returns, therefore, the income of the deceased cannot be assessed according to the returns of the income tax.

8. The deceased was allegedly doing the work of preparation of Papad and also some stitching work in her house. Therefore, in the absence of any proof of income, the income of the deceased may be fairly assessed as Rs. 4,000 per month i.e. Rs. 48,000 per year. The age of the deceased as mentioned in the post-mortem report was 45 years therefore according to Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier of 14 would be applicable and after deducting l/3rd income for personal and living expenses, the loss of dependency comes to Rs. 4,48,000 (32,000 x 14). In addition to that the claimant/husband is entitled to get Rs. 5,000/- towards loss of consortium and claimants/children are entitled to get Rs. 5,000/-each (total Rs. 15,000) towards loss of love and affection. The claimants are also entitled to get Rs. 5,000 towards funeral expenses and Rs. 5,000/- for loss of estate. Thus, the claimants are entitled for a total compensation of Rs. 4,78,000/- (Rs. 4,48,000/- + Rs. 30,000/-) alongwith interest at the rate of 12% per annum.

9. Therefore, the appeal is allowed in part. The amount of compensation is reduced to that extent of Rs. 4,78,000/-. The claimants would be entitled to get

this amount of compensation alongwith simple interest @ 12% per annum, as directed by the Tribunal, from the date of filing of the claim petition till its payment. The rest of the conditions of the impugned award shall remain intact.

10. Accordingly, we allow this appeal in part, reduce the amount of compensation and modify the impugned award dated 29th July, 1999 to the above extent. No order as to costs.

