

(2002) 01 PAT CK 0111

In the Patna High Court

Case No : Miscellaneous Appeal No. 479 of 1997

National Insurance Co. Ltd.

APPELLANT

Vs

Kurshida Begum

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Citation : (2002) 2 PLJR 10

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; S.K. Mazumdar and Diwakar Pd. Karn, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This miscellaneous appeal is directed against the award dated 29.7.97 passed by 1st Additional District Judge-cum-Motor Vehicle Claims Tribunal, Araria, in Claims case No. 4/92. The Appellant before this Court is the National Insurance Company, against which an award of Rs. 4 lakhs was granted by the Tribunal. Rs. 25,000/- was already paid as interim compensation and the rest of the amount was, perhaps, directed to be paid.

2. The Appellant's lawyer addressed this Court challenging the amount of award on the sole ground that the income of the deceased at the date of accident was assessed by the trial court at Rs. 3,690/-, whereas the Tribunal took Rs. 5,000/- as the base for income on the ground that at the time of death, the deceased's age was 53 years and he would have retired at the age of 58 years and his income at the date of retirement would have come to Rs. 6000/- and odd. Moreover, the Tribunal did not deduct 1/3rd of the income of Rs. 5000/-, rather it deducted 1/5th of the same, which was illegal. In substance the Appellant's lawyer submitted that the Tribunal had no authority to fix the dependency amount of the heirs of the deceased on the basis of the expected increment of his salary at the date of his retirement. Moreover, the deduction towards the personal expenses of the deceased should have been 1/3rd of the assessed

income, rather than 1/5th. On the basis of these submissions, the Appellant's lawyer submitted that the amount of compensation was wrongly calculated.

3. The Respondent's lawyer submitted that the Insurance Company has no statutory authority to challenge the quantum of compensation and, hence, this appeal was not maintainable. It was next submitted that the Tribunal was free to assess the income of the deceased on the basis of the expectancy of his life and the increased income till the date of his retirement.

4. So far the question whether the Insurance Company is debarred from challenging the quantum of compensation, of course, the quantum cannot be challenged; but if the principle on which the quantum of compensation is calculated is itself illegal, the Insurance Company may challenge the principle in an appeal filed by it. Now, so far the income of the deceased is concerned, as per the submission of the Appellant's lawyer himself, the deceased who died on 9.11.91 was drawing his salary of Rs. 3000/- and odd. The Tribunal has assessed the income of the deceased at Rs. 6000/- and odd till the date of his retirement because on the date of accident, he was 53 years old. The expectancy of the life and the increase of an income during this period cannot wholly be discarded in calculating dependency amount of the heirs of the deceased. The deceased was in service and if he would have remained alive, he would have earned an income of Rs. 6000/- and odd which was calculated on the basis of the chart of salary and the service book exhibited in the lower court. So, I am of the opinion that the income of the deceased on the date of retirement was rightly assessed by the trial court. I rather find that the trial court took a middle course and fixed the income of the deceased at Rs. 5000/- -neither at Rs. 3000/- and odd nor at Rs. 6000/- and odd. I am of the opinion that the Tribunal did not commit any legal error. Of course, the Tribunal failed to deduct 1/3rd of the income of the deceased which is the statutory deduction to be made while calculating the dependency amount for the heirs of the deceased, as per schedule II of M.V. Act, 1994. When the Tribunal was adopting the principle of M.V. Act, 1994, for calculating the compensation amount, I am of the opinion that all the principles as laid down under schedule II of the aforesaid M.V. Act had to be taken into consideration. Hence, 1/3rd of Rs. 5000/- should have been deducted towards the personal expenses of the deceased and not 1/5th and hence the Tribunal committed a legal error. At this stage, I must not fail to refer to the Appellant's lawyer's submission that since the accident took place in the year 1991 when M.V. Act, 1994, was not in force, the principles laid down under M.V. Act, 1988, should have been followed. I am of the opinion that the liability incurred for the accident shall be governed by Act of 1988 and that is why the Tribunal awarded Rs. 25,000/- only as interim compensation. But so far the principles governing the compensation amount is concerned, the Tribunal was free to adopt the principles as laid down under M.V. Act, 1994, because the decision of the case was made in the year 1997. So, in the backdrop of the aforesaid legal position, 1/3rd of Rs. 5000/- would come to Rs. 3,340/-. This should be the amount of dependency to be paid to the claimant. The deceased died at the age of 53

years. So, proper multiplier to compute the total compensation amount would be "11" as per the chart given in schedule II of M.V. Act, 1994. If the annual dependency amount of Rs. 36,740/- is multiplied by "11", the amount would go Rs. 4,41,140/-. This should be the proper compensation amount to be paid to the claimant-Respondent. However, the Tribunal had awarded only Rs. 4 lakhs total compensation which included the loss of consortium, loss of estate etc. So, I am of the opinion that there is no necessity to revise the amount of compensation granted by the Tribunal.

5. However, the Tribunal also awarded interest at the rate of 12% per annum on the amount of compensation. This has been assailed on the ground that this was excessive and now the prevailing rate of interest is 9% per annum. I am of the opinion that since the rate of interest has now been reduced to 9% and it is now that the compensation amount calculated at the prevailing rate of interest shall be paid to the claimant, so, the rate of interest deserves deduction.

6. In the result, this appeal is dismissed, but with modification in the interest. to be awarded to the claimant on the amount of compensation which would be reduced to 9% per annum. Other observations and directions given in the operative part of the judgment of the trial court regarding deposit of the compensation amount to the Bank etc. shall remain intact.