
(2010) 05 PAT CK 0040

In the Patna High Court

National Insurance Company Ltd.

APPELLANT

Vs

Most. Kaushalya Devi and Others

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0040

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—Hear the learned Counsel for both the parties under Order 41 Rule 11 C.P.C.

2. This Misc. appeal has been filed against the Judgment and Award dated 19.1.2007 and 3.2.2007 passed by Sri Nand Kishore Gupta, Additional District and Sessions Judge. F.T.C. -I cum- Motor Vehicle Accident Claim Tribunal, Saran at Chapra, in Claim Case No. 58/99.

3. According to the claimants Ajay Kumar Gupta died in road accident on 27.7.1999 because of the fact that the vehicle bearing registration No. DLI PA-4071 dashed the deceased. The said vehicle was insured by the appellant, National Insurance Company Ltd. According to the claimants the deceased was working at Punjab in Nahar Industrial Enterprises Private Ltd., District -Patiyala and was getting monthly Rs. 2010/-. The claimants claimed Rs. 5,00,000/-.

4. The owner of the vehicle did not appear. The Insurance Company appear and contested the claim alleging that the vehicle was not insured and the driver had no valid licence.

5. After trial the learned court below awarded compensation of Rs. 2,73,360/- with the interest @ 6 % and in addition to that the appellant was directed to pay Rs. 4,500/- as cost of cremation and loss due to death.

6. The learned Counsel for the appellant raised only one question during course

of hearing of the appeal. Learned Counsel submitted that it is well settled principles that while calculating compensation the age of the parents is required to be considered and not the age of the deceased. In this case according to the claimants who are parents of the deceased, the deceased was about 23 years. While calculating compensation the learned court below has taken into consideration the age of the deceased and multiplier of 17 has been used. The learned Counsel for the appellant submitted that the mother of the deceased must be within the age of 40 -45 years and in such circumstances multiplier should have been 14 or 15.

7. On the other hand, learned Counsel for the respondents submitted that there is no illegality in the impugned order and on the technical ground the impugned Judgment and Award cannot be interfered with.

8. It is well settled principles of law that the multiplier provided in second schedule is only a guideline.

9. The Tribunal is required to calculate just compensation. It is settled that while calculating compensation the age of the younger one of the claimants should be taken into account. In the present case the Tribunal has not taken into account the age of the mother who is admittedly younger than her husband.

10. It appears that the accident took place in 1999. Eleven years have passed. It cannot be said that the deceased who was earning Rs. 2010/- per month in the year 1999 had he been alive now he would have earned only that amount per month. The learned Counsel for the appellant submitted that the Notional income should have been considered by the court below. If it is accepted then also the notional income has been fixed at Rs. 15,000/- per annum in the year 1994. Now in various cases this Court as well as the Hon"ble Supreme Court have held that now a days even unskilled labourer easily earn Rs. 100/- per day, i.e. Rs. 3000/- per month. The compensation awarded by the learned Tribunal appears to be just compensation. If the age of the mother of the deceased is taken into account and multiplier is used then the meager amount awarded by the tribunal will be substantially reduced. In these days after such a long period it can not be said that if the compensation will be reduced it will be just compensation. Moreover, this is only a technical ground.

11. Considering the above facts and circumstances of the case, in my opinion, the compensation awarded by the learned Tribunal is just compensation as the 23 years younger earning son of the claimants died. Therefore, on technical ground alone I am not inclined to interfere with the Judgment and Award. Accordingly, this Misc. appeal is dismissed.

12. The statutory amount if deposited by the appellant before this Court may be sent to the court below so that it may be handed over to the claimants by the court below.