

(2008) 11 PAT CK 0093

In the Patna High Court

Case No : M.A. No"s. 146 and 219 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

Tara Devi and Others
 Tara Devi and Others Vs Shri
Ram Sahu and Another

RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (2009) 3 PLJR 25

Hon'ble Judges : C.M. Prasad, J

Bench : Single Bench

Advocate : Shailendra Kumar in 146 and Mr. Mukesh Pd. Singh in 219, for the Appellant; Mukesh Pd. Singh, Kaushalesh Chaudhary (in 146), M/s. Kaushalesh Chaudhary and Shailendra Kumar (in 219), for the Respondent

Final Decision : Allowed

Judgement

C.M. Prasad, J.—At the consent of both sides, both the appeals were finally heard under Order 41 Rule 11 C.P.C. The appellant Tara Devi and others under M.A. 219 of 2005 have come for enhancement in the amounts of compensation and the appellant National Insurance Company under M.A. No. 146 of 2005 has challenged the granting of award/ compensation dated 14.2.2005 of Rs. 57,000/- together with interest of Rs. 9% per annum from the date of filing of the claim petition under Claim Case No. 202 of 2003 as passed by the 7th Addl. District Judge-cum-Addl. Motor Accident Claims Tribunal, Muzaffarpur.

2. The case of the claimants was that deceased Shibu Jha, the husband/ father was traveling in Jeep No. BR7P/ 0553 on 17.10.2002 and the driver of the jeep was driving it rashly and negligently. It was further stated that in course of the driving the said Jeep dashed against one another Jeep No. BR7P/0361 moving on the road, as a result of which the Jeep No. BR7P/0553 in which deceased Shibu Jha was traveling in front of the jeep right side overturned as a result of which Shibu Jha and other passengers received grievous injury and they were removed

to hospital but Shibu Jha died in course of treatment. Regarding the accident Sindri P.S. Case No. 103 of 2002 was registered against the drivers of both the vehicles. The claimants' case was also that the deceased was working as a conductor and he was earning a monthly income of Rs. 2,500/-. A compensation amount of Rs. 3,00,000/- was claimed by the claimants.

3. The claimants examined five witnesses, out of whom A.Ws. 1, 2 & 3 were the claimants themselves who deposed that the claimant was working as a conductor and he was earning a monthly income of Rs. 2,500/-. A.Ws. 4 & 5 were the eye witnesses to the occurrence and the co-passengers in the jeep which had met accident causing injuries to the deceased resulting into his death. These two witnesses did also testify before the Claims Tribunal that the jeep in which they were boarded was being driven rashly and negligently and at very high speed and in such course of driving, the jeep had dashed against other jeep No. BR7P/0361. as a result of which the jeep in which they were traveling capsized and the deceased received injuries which resulted into his death. The concerned F.I.R. and post mortem report and the insurance policy were proved.

4. In support of the age of the deceased the claimants proved Ext.-1 which was a certificate granted by Mukhiya, Gram Panchyat Raj Jalwar mentioning that on 17.10.2002 i.e. the date of accident the deceased was aged under 52 years. Further the voter-list relating to the deceased was proved as Ext.-2 and it mentioned the age of the deceased Shibu Jha as 45 years in the year 1995. Thus, according to the voter-list the deceased would be aged about 52 years in the year 2002 when the accident took place. Relying all these evidences the claimants claimed that the deceased was aged 52 years.

5. Learned counsel for the appellants referred to the post mortem examination report Ext.-6 which mentions the age of the deceased as approximate 62 years. The learned Claims Tribunal relied on the age of the deceased as mentioned in the post mortem report and he took the age as 62 years for the purpose of calculating the compensation.

6. Learned counsel for the Insurance Company submitted that the age mentioned in the post mortem examination report should be relied as accurate and the Claims Tribunal had rightly accepted it. The submission was opposed by the learned counsel for the claimants who submitted that the age of the deceased as mentioned in the post mortem examination is not the correct but approximate age and it was not fit and proper to rely on it as the exact age of the deceased. No doubt, the post mortem report mentions age at 62 years but this age is admittedly the approximate age which means the doctors who conducted the post mortem did not go into the aspect of ascertaining the age of the deceased critically. According to the certificate of the Mukhiya (Ext.-1) the age of the deceased comes to 52 years at the time of accident. Taking into consideration all these facts and circumstances, I feel that the age of the deceased can be reasonably assessed by fixing it somewhere between the two reports i.e., 52 to 62. On such appraisal of facts. I find that it would be most reasonable to fix the

age group of the deceased between the age group of 50-55 for the purpose of calculation of compensation.

7. So far the question of the income of the deceased was concerned, the claimants proved Ext.-3 which was a certificate granted by Manager, Dhawan Transport, Muzaffarpur who stated in the certificate that the deceased was working as a conductor in his transport company and he was getting wages of Rs. 85/- per day. The claimants themselves had adduced oral evidence in which they had stated that the deceased was working as a conductor and he was earning the monthly income of Rs. 2,500/-. A.W. 7 who was also working as a conductor had deposed that the deceased was earning Rs. 85/-per day. On the basis of the evidence as adduced by the witnesses and the income certificate Ext.-3, the claimants had claimed that the deceased was earning Rs. 2,500/- per month but the Claims Tribunal did not accept this claim and treated the case of the deceased under Clause 6 of the second schedule to the M.V. Act, treating the deceased as a non-earning person and accordingly accepted income of Rs. 1,500/- per month as provided in the schedule.

8. Learned counsel for the insurance submitted that the deceased was not under regular employment and his income even according to the certificate is reported @ Rs. 85/- per day. It was also submitted that the employer of the deceased who had granted the certificate was not examined to say about the income of the deceased. Hence, it was further submitted that the income as accepted by the Claims Tribunal was correct. The learned counsel for the claimants submitted that there was sufficient evidence in the shape of oral testimony of witnesses showing that the deceased earned a monthly income of Rs. 2,500/-. No doubt, oral testimony of the witnesses is to that extent and the certificate was also produced but the certificate also did not report the income on monthly basis rather it reported as wages of Rs. 85/- per day.

9. Be that as it may but in any case, the case of the deceased for the purpose of calculating his income, cannot be treated as a case of non-earning person in order to fix his income on a notional basis as has been done by the learned Claims Tribunal. Taking into consideration the facts and circumstances of the case, I feel that in this case an income of Rs. 2,000/- per month would be most reasonable and proper to be taken for the purpose of calculating the quantum of compensation. Therefore, the deceased's income @ Rs. 2,000/- per month is accepted. On such rate the annual income will come to the amount of Rs. 24,000/-per annum.

10. During hearing learned counsel for the Insurance Company raised a point of contributory negligence and it was argued by him that according to the F.I.R. both the jeeps were being driven by their drivers rashly and negligently, hence, it was submitted that the Insurance Company i.e., the appellant in this case cannot be held solely liable for payment of the entire claim payable to the deceased.

11. No doubt, rash and negligent driving is stated in the F.I.R. as lodged by the

informant but the informant was not examined by either side before the tribunal to put forth the case of contributory negligence rather the evidence adduced by the claimants particularly by A.Ws. 4 & 5 who were the occupants of the Jeep disclosed that the vehicle in which the deceased was traveling was being driven at a very high speed in rash and negligent manner, as a result of which, it had dashed against the other jeep and thereby causing the accident. Thus, on the basis of the evidence as brought before the Claims Tribunal any case of contributory negligence cannot be argued.

12. Thus, the annual income of the deceased comes to Rs. 24,000/-. After reducing 1/3rd of the income as personal expenses of the deceased it would come to Rs. 16,000/-. As per the table to the second Schedule in the case where income of the deceased is between 50-55 years, the multiplier is 11. Thus, multiplying the multiplier it comes to Rs. 16,000/- x 11 = 1,76,000/-. The Claims Tribunal has already allowed a sum of Rs. 5,000/- as loss of consortium and Rs. 2,000/- as funeral expenses. But loss of estate of Rs. 2,500/- as provided under the table has not been allowed. It is fit and proper to allow Rs. 2,500/- as loss of Estate, hence, this amount is also allowed. Thus, the total amount of compensation allowed would be Rs. 1,76,000/- + 5,000/- + 2,000/- + 2500/- = Rs. 1.85,500/-. The Claims Tribunal has already allowed interest @ 9% per annum from the date of filing of the claim petition which is sustained. In the result, the appeals are allowed in part in the manner stated above.