
(1998) 02 PAT CK 0073
In the Patna High Court
Case No : M.A. No. 215 of 1994 (R)

New India Assurance Company Ltd.

APPELLANT

Vs

Indrasani Kunwar and Others

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Citation : (1998) 1 ACC 539 : (1998) 1 BLJR 611

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Judgement

Loknath Prasad, J.—This appeal is directed against the judgment dated 25.7.94 recorded by Shri Shashi Kumar Choudhary, 1st Adi. Claim Tribunal, Mazarbagh thereby and thereunder a sum of Rs. 1,03,088/- together with interest was awarded to the claimants who are respondents Nos. 1 to 3.

2. The fact in short for the purpose of this appeal is that one Man Singh, the husband of the claimant, Indrasani Kunwar and the father of other two claimants was going on G.T. Road by his left side on 17.7.88 then a truck bearing No. UPX 6609 belonging to the Respondent No. 4, came with a great speed and the driver was driving the same rashly and negligently and dashed against the deceased on the Kutchcha portion of the road due to that he died on the spot and for that a police case was also instituted against the driver of the truck. For the accidental death of the deceased wife and two sons preferred aforesaid claim case and it was alleged that the deceased was working as Forester aged about 53 years or so and he was drawing monthly salary of Rs. 1300/- P.M. and claimed compensation of Rs. 4 Lakhs. The owner of the truck has not contested the claim case but the appellant i.e. Insurance Company contested the claim case and ultimately the Tribunal on the basis of the evidence awarded a sum of Rs. 1,03,088/- as compensation together interest to the claimants. Being aggrieved and dissatisfied by the order the Insurance Company preferred this appeal on various grounds.

3. When this appeal was taken up the learned Counsel for the appellant mainly

challenged the quantum of compensation granted by the Tribunal. Moreover admittedly offending vehicle was comprehensively insured with the appellant-Insurance Company and there is ample evidence on the record to show that on 17.7.88 when the deceased was going on the left side on kutchcha portion of the road i.e. on G.T. road the truck came rashly and negligently and driver also lost control and it crushed the deceased resulted in his death. For that a police case was instituted and post-mortem of the deceased was also held. So the accidental death of the deceased is well proved and as the vehicle was insured with the appellant so the claimants who are widow and sons of the deceased are entitled to compensation.

4. So far as the quantum of compensation which has been challenged in this appeal is concerned from the finding of the Tribunal and on the basis of the certificate granted by the employer it can be said that the deceased was working as Forester and his salary was Rs. 1361.50 p. i.e. Rs. 1362/- p.m. If that is so if this amount is to be multiplied by 12 then it comes to Rs. 16,344/- as held by the Tribunal. The Tribunal assessed the age of the deceased at 55 years and thus, on the basis of calculation came to the conclusion that Rs. 49,032/- the salary of the deceased was available for three years and deducted 1/3rd as his personal expenses and Rs. 32,688/- which will be the dependency of the family which the claimants are entitled and further it was held that even after his retirement the deceased could have contributed Rs. 300/- p.m. to the family for about 14 years or so which comes to about Rs. 42,000/- is to be also calculated as dependency of the family. The learned Counsel for the appellant submitted that actually this amount should not have been added as a compensation amount. In my view, the Tribunal rightly assessed that even after retirement the deceased could have contributed to the family from his pension and actually he assessed the annual dependency of the family from the pension amount at Rs. 300/- p.m. Only that is on lower side. Thus the Tribunal was perfectly justified in coming to a conclusion that Rs. 32,688/- and further Rs, 42,000/- in all Rs. 74,688/- in around figure Rs. 75,000/-. The tribunal has also awarded a sum of Rs. 20,000/- as consortium which is definitely unwarranted when he decided the compensation amount on the basis of applying multiplying theory and further it has come in evidence that even after death of the deceased his widow is getting family pension. Thus, amount of consortium was inadmissible in such a situation.

5. Accordingly I am of opinion that the claimants i.e. widow and sons of the deceased who are respondent Nos. 1 to 3 here are entitled for compensation to the tune of Rs. 75,000/- only less the amount already paid together with interest from the date of application as awarded by the Tribunal.

6. In the result, this appeal is allowed in part but without any costs.