(2016) 06 PAT CK 0032

In the Patna High Court

Case No : Miscellaneous Appeal No. 807 of 2012

Nirmala Kumari Sinha @ Nirmala Devi — APPELLANT

Vs

Oriental Insurance Company Ltd. — RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:

Citation : (2016) 166 AIC 559 : (2016) 2 BBCJ 424 : (2016) 3 BLJud 202 : (2016) 3 PLJR 313 : (2016) 3 TAC 399

Hon'ble Judges : Mr. Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Mr. Shambhu Sharan Singh, Advocate, for the Appellant; Mr. Ashok Priyadarshi, Advocate, Mr. Kameshwar Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Aditya Kumar Trivedi, J.—Instant appeal has been filed on behalf of appellants/claimants against the judgment dated 23.01.2012, award dated 27.07.2012 passed by the Additional District Judge, 6th-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case No. 448 of 2008 on account of being dissatisfied with the quantum of compensation granted by the learned Tribunal.

2. Brajesh Kumar, a Police Constable while was returning on a motorcycle along with Satyendra Yadav, pillion rider from Bhakhtiyarpur to his village and as soon as reached at village-Lakhanpura near Shivam Petrol Pump, a truck bearing Registration No.JH-12A-9062 coming from opposite side being rashly and negligently driven dashed against and on account thereof, deceased died at the spot. On the fard-beyan of Rakesh Kumar, Bhakhtiyarpur P.S. Case No. 295 of 2007 was registered against unknown. However, during course of investigation, the offending vehicle was properly identified. Furthermore, it has been disclosed that deceased was posted at Biharsharif at Nalanda bearing Police Constable No. 1275 and was drawing Rs. 8,687/- per month as Basic Salary.

3. As is evident from L.C. Record, the driver Ashok Kumar and owner Shailesh Jain did not appear on account thereof, the proceeding sailed against them ex parte.

4. The Oriental Insurance Company/respondent appeared, filed written statement wherein apart from putting ornamental objection, it has been pleaded that deceased while driving motorcycle was not possessing driving licence while the driver of the truck was possessing a valid licence. It has also been stated that deceased was himself negligent and on account thereof, claimants are not at all entitled for claim. However, no evidence was led during course of trial before Tribunal at its end.

5. During course of trial, the learned Tribunal had framed following issues:-

I. Is the compensation case as framed is maintainable?

II. Have the claimants got valid cause of action for the compensation case?

III. Whether the deceased Brajesh Kumar died in Motor vehicle accident?

IV. Did the accident take place due to rash and negligent driving of the driver of the truck bearing No.JH 12A-9062?

V. Whether the aforesaid truck was insured at the time of accident with O.P. No. 3?

VI. Whether the owner and driver of the offending vehicle were having valid and effective permit and driving licence at the time of accident?

VII. To what other relief or reliefs, if any, the claimants are entitled?

And decided the same allowing Rs. 11,87,360/-, claim amount with an interest @ 6% per annum from the date of filing of Claim petition till its realisation which should be paid within two months from the order impugned. Insurance had not questioned proprietary of the order. As stated above, claimants have got some sort of reservation relating to quantum of compensation as well as rate of interest granted by the learned Tribunal whereupon instant appeal has been filed.

6. There happens to be no controversy relating to identification of the deceased being a Police Constable. While deciding Issue No. 7, the learned lower Court had considered Exhibit-5, the pay certificate issued by Deputy Superintendent of Police, Headquarters, Nalanda, which is of dated 25.01.2008 where from it is evident that total emoluments received by the deceased happens to be Rs. 8,687/- and further, the learned Tribunal had chosen for the purpose of calculation Basic Salary, Dearness Allowance, House Rent, and Medical Allowance coming to Rs. 5731/- whereupon 50% has been allowed to be increased under the heading of future prospect appertaining to Rs. 2865/- totalling Rs. 8596/-. Furthermore, deceased was identified aged about 28 years and so, multiplier of 18 has been allowed.

7. When the record has been gone through, it is evident that vide letter no. 1976

dated 23.11.2010, which has been seen by the Presiding Officer on 10.01.2011, the revised pay in terms of 6th Pay Commission has been furnished by the same Authority which has completely been ignored as is evident from the judgment itself. How and why, neither the order sheet speaks nor the judgment impugned. Moreover, the said document has not been exhibited in the record. Therefore, the learned lower Court happens to be at fault in discarding the aforesaid document, which was already available on the record since before. Furthermore, the aforesaid document should have been accepted in the background of the fact that strict compliance of Evidence Act is not at all found applicable relating to claim petition. Whereupon, the pay certificate should have been exhibited in same way like Exhibit-5. Apart from this, it is also evident that same was made available in compliance of the Court''s order.

8. From perusal of the same, it is evident that deceased was drawing Rs. 10,135/- and the details therefor has been made as:-

Basic Pay -

8530.00

D. A. 9% -

768.00

Special Duty Allowance -

65

Medical Allowance -

100

C. A. -

30

Ration Money -

612

Laundry Allowance -

30

= Total Rs.

10,135/-

The aforesaid amount also consist deduction to Rs. 330/- as Rs. 300/- under G.P.F., Rs. 30/- under Group Insurance.

9. Furthermore, the learned Tribunal had granted Rs. 2,000/- against funeral expenses, Rs. 2,500/- against loss of estate and Rs. 5,000/- on account of loss of consortium.

10. In Surti Gupta v. United India Insurance Company Limited and another reported in (2015) 11 SCC 457, it has been held:-

"9. We have heard the learned counsel for both the parties and also examined the facts and circumstances of the case and the evidence on record. It is clear that the deceased at the time of her death was working as a teacher in a Government school. It has been observed by the High Court that the appellant had been adopted by the deceased, and was wholly dependent on her mother at the time of the accident. It has also been observed by the High Court for the purpose of calculation of future loss of dependency of the appellant that the deceased at the time of the accident on 10.7.1990 was drawing a salary of Rs. 4,214/- per month and was 45 years of age. However, we are of the view that the salary of the deceased at the time of her death taken by the High Court is on the lower side considering that she was employed as a permanent teacher in a Government school and she must have had at least 20-25 years of work experience at the time of her death. Therefore, on considering the facts, circumstances, pleadings and evidence on record in the present case, we are of the view that it would be just and proper to take the monthly income of the deceased at Rs. 6,000/- per month. Further, on addition of 30% to the income of the deceased towards future prospects as per the principles laid down by this Court in the case of Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121, the monthly income for the calculation of future loss of dependency of the appellant would be Rs. 7,800/- (Rs. 6,000/- + 30% of Rs. 6,000/-). Therefore, the annual income comes to Rs. 93,600/-. On deduction of ?rd of the annual income towards personal expenses and applying the appropriate multiplier as per the principles laid down by this Court in the case of Sarla Verma (supra), the future loss of dependency suffered by the appellant is calculated at Rs. 8,73,600/- [(Rs. 93,600/- (-) ?rd of Rs. 93,600/-) x 14].

10. Further, the High Court has certainly erred in awarding a meagre amount of only Rs. 15,000/- for loss of estate, loss of love and affection and funeral expenses. Therefore, we award Rs. 1,00,000/- towards loss of love and affection as per the decision of this Court in the case of Juju Kuruvila v. Kunjujamma Mohan (2013) 9 SCC 166. We also award an amount of Rs. 1,00,000/- towards loss of estate as per the decision of this Court in the case of Kalpanaraj v. Tamil Nadu State Transport Corporation (2015) 2 SCC 764. Further, a sum of Rs. 25,000/- is awarded towards funeral expenses as per the principles laid down by this Court in the case of Rajesh v. Rajbir Singh (2013) 9 SCC 54.

11. The High Court has further erred in awarding an interest at the rate of 6% per annum only, instead of 9% per annum on the compensation amount as per the principles laid by this Court in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481. We accordingly award an interest at the rate of 9% per annum on the compensation amount."

11. For proper adjudication in the background of details of pay having been furnished vide Memo No. 1976 dated 23.11.2010 by the Deputy Superintendent

of Police, Nalanda in compliance of Court''s order 170/30.06.2010, the learned Tribunal should have taken into consideration the relevant Pay Slip and on account thereof, there happens to be some sort of deflection at the end of the learned Tribunal in identifying the pay which the deceased was drawing and on account thereof, there happens to be mis-calculation including over future prospect. Furthermore, the learned Tribunal ignored the quantum as fixed by the Hon''ble Apex Court under different heads as referred above along with rate of interest. As pointed out, there happens to be lapses on the part of Tribunal while adjudicating upon Issue No. 7, whereupon needs re-admittance.

12. Consequent thereupon, the judgment and award impugned is set aside. Appeal is allowed. Matter is remitted back to the learned Tribunal on limited score over Issue No.7 relating to quantum of compensation directing to hear the parties and ascertain proper claim amount along with rate of interest, more particularly, within three months from the date of receipt of L.C. Record. However, in the facts and circumstances, parties will bear their own costs. Office to transmit L.C. Record at once.

