(2016) 06 TP CK 0013

In the Tripura High Court

Case No : MAC APP. No. 08 of 2013

Oriental Insurance Company Ltd. APPELLANT

Vs

Pramila Devi RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, Section 168, Section 173

Citation : (2017) AAC 607

Hon'ble Judges : T. Vaiphei, ACJ.

Bench : Single Bench

Advocate : Mr. K. Bhattacharjee, Advocate, for the Appellant; Mr. D.C. Roy and Mr. N. Choudhury, Advocates, for the Respondent Nos. 1 & 2

Final Decision : Partly Allowed

Judgement

T. Vaiphei, A.C.J.(Oral)—This appeal is directed against the judgment and award dated 09.10.2012 passed by the learned Member, Motor Accident Claims Tribunal, Court No. 1, West Tripura, Agartala in T.S. (MAC) 336/2009 on the ground that the compensation so awarded to the claimant-respondents is excessive.

2. The original claimants are the wife and minor son of the deceased, who was a BSF Jawan, who met with an accident along with some other BSF personnel while travelling by Maruti Gypsy bearing registration No. TR-01-J-0538 while proceeding towards Bagafa and was hit by another vehicle bearing registration No. TR-03-A-1772 (TATA truck), which was coming from the opposite direction with a high speed and in a rash and negligent manner. He subsequently succumbed to his injuries on 01.06.2008. On the death of the deceased, the claimant-respondents filed a claim petition claiming compensation. In the course of taking evidence, another legal heir i.e. mother of the deceased came into picture, and she was also duly treated as the other legal heir of the deceased. At the time of the accident, the victim was 29 years old, and was serving as a Constable under 129 Bn. BSF with a monthly income of Rs. 12,318/-. The

accident was registered as a police case vide Santirbazar P.S. Case No. 36/2008 under Sections 279/338/304A of IPC against the driver of the offending vehicle. There is no dispute regarding the accident taking place as well as the death of the deceased in the vehicular accident in question. The Tribunal after hearing the parties passed the impugned judgment and award awarding sum of Rs. 30,00,274/- as compensation with the following break up:- Rs. 29,93,274/- by way of compensation, Rs. 2,000/- by way of funeral expenses and Rs. 5,000/- for loss of consortium.

3. The grievance of the insurer-appellant as projected is that the Tribunal failed to deduct one-third of the income as the personal and living expenses of the deceased and wrongly deducted only one-fourth of his income towards such expenses. Another grievance of the insurer is that the Tribunal had wrongly applied a multiplier of 18 which should have been-

17. In so far as deduction of one-fourth of the amount towards the personal and living expenses of the deceased is concerned, the learned counsel for the respondent-claimants concedes that the deduction should be restored to the extent of one-third and a mistake has, therefore, crept in the deduction made by the Tribunal.

4. As far as the submission of the learned counsel for the appeal that application of multiplier of 18 is inappropriate and the correct multiplier should be 17 is concerned, the learned counsel for the claimant-respondents submits that in terms of the decision in Sarla Verma case reported in (2009) 6 SCC 121, when the age of the deceased is 25 years or so at the time of his death, the multiplier cannot be 17 but 18. As per the service book of the deceased maintained by the BSF authorities, the date of birth of the deceased is entered as 28.08.1983. That being the position, the deceased was undoubtedly 25 years of age at the time of accident. As the deceased was about 25 years old at the time of his death, in my judgment, the Tribunal did not commit any wrong in adopting a multiplier of 18 to the facts of this case. The contention of Mr. K. Bhattacharjee, the learned counsel for the insurer-appellant also fails in this behalf. The amount for loss of consortium fixed by the Tribunal @ Rs. 5,000/- is also on the lower side and should be increased to Rs. 10,000/- in terms of the judgment in Sarla Verma''s (supra) case. So, is the funeral expenses, which should be enhanced to Rs. 5,000/-.

5. Consequently, after deducting one-third of the income of the deceased towards his personal and living expenses, the quantum of compensation payable to the claimants should stand reduced to Rs. 26,60,688/- instead of Rs. 29,93,217/-, to which another sum of Rs. 10,000/- by way of loss of consortium and Rs. 5,000/- for funeral expenses shall be added. The total amount of compensation payable to the claimant-respondents shall, therefore, stand reduced to Rs. 26,75,688/-.

6. The appeal is partly allowed. The appellant-insurer shall now deposit Rs.

26,75,688/- (Rupees Twenty six lakhs seventy five thousand six hundred eighty eight) with interest @ 6% per annum from the date of the claim petition i.e. 01.08.2009 with the Registry of this Court within 45 days from today for payment to the claimant-respondents, failing which the rate of interest payable shall stand enhanced to 9% per annum from the date of claim petition till payment is fully made. Out of the aforesaid amount of compensation, Rs. 10,000/- shall be paid to the claimant No. 1, Smt. Pramila Devi for loss of consortium. The claimant Nos.1 and 2 shall be entitled to 40% each while the mother of the deceased, Smt. Sabitri Devi, will receive 20% of the compensation, i.e. after deducting Rs. 10,000/- for payment to the claimant No. 1 for loss of consortium.

7. It is further ordered that from the 40% share of the claimant-respondent No. 1, 40% shall be kept in a fixed deposit scheme in her name in any nationalized bank for a period of 5 years, which shall not be withdrawn without the prior permission of the Tribunal. The entire share of the minor respondent No. 2 i.e., 40% of the compensation, shall also be kept in a fixed deposit scheme in his name in any nationalized bank till the time he attains majority. Out of the share of the mother of the deceased, 50% shall be kept in a fixed deposit scheme in her name in any nationalized bank for a period of 5 years. This amount shall not be withdrawn without prior permission of the Tribunal. The respondent No. 1 shall be at liberty to withdraw the monthly interest thereon from the account of the claimant No. 2 and utilize the same for the welfare of the minor son. The respondent No. 1 and mother of the deceased shall also be at liberty to withdraw the monthly interest from their fixed deposit amount for their expenses. The impugned judgment and award, therefore, stands modified in the manner and to the extent indicated above. The appellant-insurer shall deposit the entire compensation amount and the interest due with this Registry.

8. A copy of this judgment shall be supplied to the learned counsel for the appellant-insurer.

9. Transmit the LCRs forthwith.