
(2001) 08 PAT CK 0018
In the Patna High Court
Case No : Misc. Appeal No. 106 of 1996

Oriental Insurance Company Ltd.	Vs	APPELLANT
Ramotar Prasad Yadav and Others		RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Citation : (2001) 4 PLJR 67

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Devendra Kumar Sinha, Ambika Bhagat and Kamal Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.N. Pathak, J.—This appeal is directed against the order passed by 1st Additional District Judge-cum-Claims Tribunal in M.V. Claim Case No. 10 of 1982. The aforesaid claim case was filed by Ramotar Prasad Yadav and his wife Urmila Devi against Santosh Kumar Agrawal and the Oriental Insurance Company, Saharsa Branch, for the death of their son Pawan Kumar.

2. It was alleged that Pawan Kumar was travelling in Bus bearing Regd. No. 1 BRU-8585 and the bus met with an accident on the way. On evidence adduced by both the parties, the Tribunal awarded an amount of Rs. 1,92,000/- with interest @ 6 per cent per annum from the date of death. The Appellant before this Court is the Oriental Insurance Company which was directed to pay the entire amount.

3. Before me, it was submitted that the deceased was 20 years old at the time of death and his father was aged 52 years, when he was examined in Court, but the Tribunal assessed the amount of income of the unemployed deceased at Rs. 400/- per month and so the annual income of the deceased was assessed to be Rs. 4,800/-. The tribunal applied the multiplier of "40" and, thus, calculated the amount to be 1,92,000/-. This multiplier has mainly been challenged in his appeal by the Appellant, in view of the fact that the Tribunal applied the principle

adopted in the M.V. Act 1994, although the alleged accident had occurred on 14th August 1992 when M.V. Act 1988 was in force. Besides the same, the multiplier used by the Tribunal as "40" was also wrong because the principle as laid down in the M.V. Act 1994 regarding the multiplier is that the survival age of the victim or the claimants, whichever is higher, should be used as multiplier. In the instant case, father of the deceased boy was aged 52 years, according to the finding of the Tribunal itself and, therefore, the multiplier of "40" used by the Tribunal was patently wrong and illegal. So far as the income of the deceased is concerned, the Tribunal assessed it at the rate of minimum wages to be paid to a labourer on the date of accident. So on these grounds, the Appellant challenged the impugned award before this Court.

4. The Respondents' lawyer (claimants' lawyer) submitted before me that the Schedule of the M.V. Act 1994 mentioned that in case of non-earning member of the family, a lump sum of Rs. 15,000/- per annum should be the amount of income. But it is evident that M.V. Act 1994 has not been made retrospective in its operation. So all the liabilities of the owner of the bus or the Insurance Company shall be the liability under the M.V Act 1988. Admittedly, the deceased was not earning any income at the time of his death. So when the court fixed his income as lump sum to be Rs. 4,800/- annually, that income in my opinion is not to be changed nor there is any necessity to interfere with this finding of the Tribunal. It was submitted that the Tribunal was unjustified in calculating this amount of income @ Rs. 4800/- because the family status of the deceased would not allow the Tribunal to assess the income of the deceased at the rate of minimum wages paid to a labourer. However, this view of the claimants' lawyer is not sustainable in view of the fact, that when admittedly the deceased was not having any income at the relevant time, there is no question of any loss of income enjoyed by the parents of the deceased on account of death of their son. So when the tribunal took a particular amount of probable income of the deceased, I do not think there was any injustice caused to the claimants. However, the multiplier used by the tribunal was apparently wrong, because the multiplier should have been used taking into consideration the age of the claimants. Admittedly the father of the deceased was aged 52 years. The age of the mother of the deceased was not ascertained. So if it is assumed that the mother of the deceased was of the age of 45 years at the time when the compensation case was filed and taking the average age of survival as 60, the multiplier to be used in this case should be 15. So after deducting 1/3rd of the income of the deceased, the remaining amount for the benefit of the claimants shall come to Rs. 3200/- and if multiplied by 15, this amount would go to Rs. 48,000/-. So I am of the opinion that the amount of compensation of Rs. 1,92,000/- was wrong.

5. In the result, this appeal is allowed and the award passed by the lower court is set aside. The claimants shall be paid Rs. 48,000/- along with interest @ 6% per annum from the date of filing of the claim-case upto the date of realisation. Perhaps, Rs. 25,000/- as interim compensation has already been paid by the

Appellant and so whatever amount has already been paid, deducting the same, the rest of the amount shall be paid by the Appellant along with interest @ 6 per cent per annum from the date of filing of claim application till the date of realisation.