
(1998) 08 PAT CK 0005

In the Patna High Court

Case No : M.A. No. 56/88

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Nandani Devi and Others

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304

Citation : (1999) 1 PLJR 287

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The appeal has been filed by the Insurance Company against the judgment dated 4.10.1997 and award dated 22.11.1997 in Claim case No. 23/93 passed by 2nd Addl. District Judge-cum-Motor Vehicle Claims Tribunal, Khagaria.

2. The claim case was filed by Respondent No. 1, wife of the deceased, for herself and on behalf of her minor children and father and mother of the deceased. Bindeshwari Yadav husband of Respondent No. 1 met with an accident with Tanker on Gandak River bridge while returning back after selling milk and died on the spot causing serious shock and agony to his dependants due to premature death. A criminal case bearing Khagaria P.S. Case No. 277/93 under Sections 279 and 304 of Indian Penal Code was lodged and after investigation charge-sheet was submitted. Post mortem was held over the dead body of the deceased and the Doctor prepared postmortem report. The deceased was aged about 25 years at the time of death. He was milk supplier and his income was Rs. 8000/- per month. The claimant claimed compensation of Rs. 7 lacs and Rs. 1 lacs for mental agony etc. The vehicle was insured under the Appellant's Insurance company.

3. The Tribunal on consideration of evidence and material available on the record held that income of the deceased at the time of death was Rs. 1500/- per month

and accordingly allowed compensation to the tune of Rs. 2,30,000/-.

4. Learned Counsel for the Appellant challenged the quantum of compensation and pointed out that the Tribunal did not consider recent principle enunciated by the Apex Court regarding calculation and assessment of compensation. In support of his submission he referred the decision in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, wherein the Apex Court held that multiplier method of assessment of compensation is proper, logically sound and well established method and departure can be made from the multiplier method only in rare cases. It further held that multiplier method should be applied in such a way that dependency calculated in money value should fetch amount of dependency to the applicant if the awarded amount is deposited in Bank or other financial institution in fixed deposit. On the other hand, learned Counsel for the claimant-Respondent submitted that Tribunal has failed to consider mental agony of Respondent No. 1 and had deprivation of conjugal life and also that she is to bring up minor children out of whom one is daughter.

5. It is manifest from the judgment that Tribunal has applied multiplier method but did not consider the principle laid down by the Apex Court regarding calculation of assessment of compensation. The Tribunal has determined monthly income of the deceased at Rs. 1500/-. One-third of the said amount must have been spent by the deceased for his personal expenditure and on deduction of the said amount monthly dependency comes to Rs. 1000/- and yearly dependency comes to Rs. 12000/- and by using multiplier of 8, compensation comes to Rs. 96000/- but if that amount is deposited in any Bank in fixed deposit it would fetch less than Rs. 1000/- per month and as such it would be proper to use multiplier of 9. Then compensation would come to Rs. 1,08,000/- and if the same amount is deposited in the fixed deposit it would fetch something more than Rs. 1000/--which would be proper in my view. The Tribunal has also granted cost of funeral expenses, consortium etc. to the tune of Rs. 9500/- which does not appear to be illegal. Besides, mental agony of Respondent No. 1, deprivation of conjugal life and also that she is to bring up minor children out of whom one is daughter were also to be considered in the facts and circumstances of the case. Thus compensation is fixed at Rs. 1,50,000/- taking it round figure and in my view that would be proper compensation in the facts and circumstances of the case.

6. Accordingly, this appeal is partly allowed and compensation is fixed at Rs. 1,50,000/- out of which the amount already paid to the claimant shall be deducted. It is, however made clear that claimant-Respondents shall also be entitled to interest as has been allowed by Tribunal. The Appellant must pay entire amount of compensation within a period of one month from today.