(2024) 12 JH CK 0064

In the Jharkhand High Court

Case No : Miscellaneous Appeal No.678 Of 2018

Oriental Insurance Company Ltd — APPELLANT

Vs

Smt. Sugni Devi, W/o late Baldeo Mahato. — RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 337, 338, 427

Citation : (2024) 12 JH CK 0064

Hon'ble Judges : Subhash Chand, J

Bench : Single Bench

Advocate : Ganesh C. Jha, Arvind Kr. Lall, Arvind Kr. Lall, Ganesh C. Jha

Final Decision : Disposed Of

Judgement

Subhash Chand, J

1. M.A. No. 678 of 2018 has been filed on behalf of the appellant- Oriental Insurance Company Ltd. and M.A. No. 637 of 2018 has been preferred on behalf of the claimant-Smt. Sugni Devi & Ors.

2. Both these appeal have been directed against the one and same impugned award therefore both are being disposed of by the common judgment.

3. The instant miscellaneous appeals have been directed against the award dated 03.07.2018 passed in Motor Accident Claim Case No. 104 of 2012 by the Presiding Officer, Motor Vehicles Accident Claim Tribunal, Ranchi whereby the amount of compensation of Rs.52,32,274/-has been awarded.

4. The brief facts leading to these Miscellaneous Appeals are that on 29.10.2011 at 9 O'clock deceased Baldeo Mahto was plying the ambulance vehicle registration No. JH-02-8345 carrying two patients alongwith their attendants from Bachara Regional Colliery Hospital, CCL to Ranchi. While he reached near Bathawa Ghati, PS Khelari the truck bearing registration no. CG-10C-4607 which was driven by its driver rashly and negligently collided with the ambulance which

resulted into death of the driver. While the other occupants including patients in the ambulance sustained grievous injury. They were moved to the Dakara Hospital where Baldeo Mahto and Boundhi Devi both also died during treatment. Postmortem of the deceased Baldeo Mahto was conducted at RIMS, Ranchi. The FIR of this case was registered at Khelari P.S. Case No.84/11 on 29.10.2011 against the driver of the offending truck under section 279, 337, 338, 427 and 304A of IPC and charge-sheet was also filed in the same sections against the driver of the offending truck. Deceased after his death left his wife, sons and mother as legal heirs. He was 49 years old and was getting salary Rs.62,000/- per month.

5. On behalf of op no.1 the owner of the vehicle no written statement was filed and claim petition was proceeded ex parte against him.

6. On behalf of opposite party Oriental Insurance Co. Ltd. filed written statement in which this plea was taken that the plea which was taken in the claim petition are to be strictly proved by the claimants. If the offending truck was ensured by the responding Insurance Company since their being the breach of terms and condition of the insurance policy, the insurance company is not liable to pay any amount of compensation. The liability will go to the owner.

7. The learned Tribunal while disposing the claim petition framed following issues:

(I) Whether the claim application as filed is maintainable?

(II) Whether applicants have valid cause of action for the case?

(III) Whether death of the deceased namely Baldeo Mahto resulted to the alleged vehicular accident caused due to driving the offending vehicle Truck registration No. CG-10C-4607 rashly and negligently?

(IV) Whether there is contributory negligence of the deceased namely Baldeo Mahto, driver of the Ambulance involved in the accident, if yes to what extent?

(V) Whether the insured/owner of the offending vehicle has violated terms and conditions of the insurance policy? (VI) Whether applicants are entitled for compensation as claimed, if yes, against whom and to what extent?

(VII) To what relief or reliefs, if any, the applicants are entitled to?

8. On behalf of appellant in oral evidence examined altogether two witnesses, AW1- Sugani Devi and AW2- Mohan Kumar Mahto and in documentary evidence filed Exhibit-1 Certified copy of FIR, Ext.2 Certified copy of charge sheet, Ext.3 Photo copy of postmortem report of Baldeo Mahto, Ext.4 Photo copy of certificate of registration for the offending vehicle, Ext.5 Photo copy of insurance policy for the offending vehicle truck, Ext.6 photo copy of national permit for the offending vehicle truck, Ext.6/1 Photo copy of authorization certificate for offending vehicle truck, Ext.7 photo copy of identify card of the deceased Baldeo Mahto, Ext.8 Original copy of acknowledgment for filing Income Taxt Return on behalf of deceased Baldeo Mahto, Ext.9 Original copy of TDS, Form-16, of the deceased

Baldeo Mahto for assessment year 2011-12, Ext.10 to 10/07 salary certificate of the deceased namely Baldeo Mahto.

9. The learned Tribunal after hearing the rival submissions of parties passed the impugned award vide order dated 03.07.2018.

10. Both the appellants have assailed this impugned award on the point of quantum.

11. The learned counsel for the appellant-Insurance Company has submitted that the quantum of the compensation is wrong. Firstly the salary of the month September should have been the basis salary as accident took place in month of October, 2011. Secondly it has been submitted that deceased after his death has left the six dependents the deduction should have been 1/4th in place of 1/5th. Thirdly the quantum of compensation has also been assailed on the ground that the rate of interest has been awarded 12% it should have been 7.5% from the date of order.

12. Per contra the learned counsel for the claimant has vehemently opposed the contentions made by the learned counsel for the Insurance Company. It has been submitted that so far as the deduction is concerned it has been deducted 1/5th towards personal living expenses and the deceased had left six legal heirs after his death and it should have been 1/4th in view of the judgment passed in "Sarla Verma vs. DTC" (2009) 6 SCC 121. As such the learned counsel for the claimants have fairly admitted that the deduction towards personal and living expenses should have been 1/4th in place of 1/5th.

13. So far as the basis of the assessment of the loss of income is concerned, the learned counsel for Insurance Company has submitted that the basis should have been the salary of month of September. While the learned counsel for the claimant has submitted that the learned Tribunal has rightly relied upon the salary of Month of October, 2011. Admittedly the said accident took place on 29.10.2011 the very basis of computation of the loss of income will be the month of October, 2011. Though in the salary of month of October the salaries shown Rs.62,922.62/- including leave encashment and the amount of leave encashment is Rs.27,568/- and after deduction of the leave encashment, the salary of the month of October, 2011 would be Rs.35,354.22/- and annual income has been assessed accordingly basing the same on the salary of month of October. The learned counsel for the Insurance Company also fairly admitted that the learned Tribunal has excluded the leave encashment amount Rs.27,568/- but contention is that the salary of the month of October, 2011 should not have been the basis rather the salary of month of September should have been the basis.

14. I am not in agreement with the learned counsel for the appellant-Insurance Company since the very accident took place on 29.10.2011 and the very salary of month of October, 2011 will be the basis of the computation of the loss of income after the death of deceased. As such the finding given by the learned Tribunal on this very point bears no infirmity and same needs no interference and

the plea raised by the learned counsel for the appellant-Insurance Company is hereby overruled.

15. So far as the rate of interest is concerned, the learned Tribunal has awarded 12% rate of interest from the date of award. The learned counsel for the appellant-Insurance Company has submitted that it should have been 7.5% per annum.

16. The learned counsel for the claimant-respondent has submitted that the learned Tribunal has given the finding not giving the award from the date of application that too bears infirmity reason being the learned Tribunal has recorded the finding that the claim petition was filed on 03.04.2012 and same was admitted on 31.03.2016. So far as the period of 4 years is concerned, same could have been excluded and the interest should have been awarded from the date of admission i.e. 31.03.2016.

17. This Court is with the agreement of the learned counsel of claimant-respondent that the interest should have been awarded by the learned Tribunal from the date of admission after excluding the period of 4 years which took in admitting the claim petitions on account of the latches on the part of the claimants. Therefore, the date of interest will be the date of admission of the claim petition.

18. So far as the rate of interest is concerned the Hon'ble Apex Court in the case of "National Insurance Company Ltd. vs. Mannat Johal" (2019) 2 ACC 355 at para-13 held as under:

"13.The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."

19. In view of the above judgment 7.5% rate of interest is justified. Therefore the 7.5% interest will be payable from the date of admission i.e. 31.03.2016 till the date of realization of the amount of compensation.

20. So far as the amount in conventional head is concerned which has been assailed on behalf of the respondent-claimants. It has been submitted that one is spousal consortium and another is filial consortium. So far as the spousal consortium is concerned the same has been given by the learned Tribunal but so far as the filial consortium is concerned, the same should have been awarded in view of the judgment of "Magma General Insurance Co. Ltd. vs. Nanu Ram" AIR Online 2018 SC 189 in which Hon'ble Apex Court held that the filial consortium should be awarded to the parents in case of death of their son. Para 8.7 reads as under:

“8.7.A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldover have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count 5. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.”

As such under the conventional head the filial consortium of Rs. 40,000/- will also be added and after the lapse of the six years the 10% has to be added after every 3 years then there would be addition of Rs.14,000/- in the amount of consortium therefore total amount under conventional head would be Rs.70,000/- +40,000/-+14,000/-=1,24,000/-. Therefore the modified quantum is assessed as under:

“Monthly Income = 35354/- per month Future prospect- 30% of Rs. 35354/- = 10606/-Total monthly Income = (35354 + 10606) = 43960 per month

Deduction toward personal and living expenses in view of “Sarla Verma vs. DTC” (2009) 6 SCC 121 is 1/4th if number of dependent family member are 4 to 6 therefore, total monthly income would be 43960- (43960 x 1/4) = 32,970/- . Total annual income = 32970 x 12 = 3,95,640/-

Multiplier of M-13 would be applicable in view of “Sarla Verma Case (supra)”. Therefore, amount of compensation would come to the tune of Rs. 3,95,640x 13 = 51,43,320/-

Total amount of compensation after addition of Rs. 1,24,000/- (as stated above under conventional head including loss of filial consortium) = 51,43,320 + 1,24,000= 52,67,320/-.”

21. Accordingly, these Miscellaneous Appeals stand disposed of and the impugned award stands modified as stated herein above.

22. Let the record of learned court below be sent back alongwith copy of the judgment.