

(2019) 02 CHH CK 0013

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal Of Compensatic No. 1381 Of 2017

Rampal Singh & Others

APPELLANT

Vs

Rashid Khan & Others

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 02 CHH CK 0013

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : Samir Singh, Sanjay Patel, R.N. Pusty

Final Decision : Partly Allowed

Judgement

Gautam Chourdiya, J

1. This appeal is by the claimants against the award dated 19.05.2017 passed by the Additional Motor Accident claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.45/2012 awarding total compensation of Rs. 3,59,100/- with interest @ 6 per annum from the date of application till realization, fastening liability on the non-applicant no.3. In fact, the Tribunal assessed the total compensation of Rs.5,13,000/-, however, considering the contributory negligence of the deceased to the extent of 30%, after deducting to that extent from the said amount, the Tribunal awarded Rs.3,59,100/-.

2. As per claim petition, on 31.05.2010 deceased Deepak Singh, 28 years, earning Rs.10,000/- per month working as Doctor-cum-Pathologist by profession along with his Aunt Chandrawati and Niece Ankita was going on motorcycle bearing registration no. CG-DL-7456 from Simga to his residence, however, on the way he dashed the standing vehicle Truck bearing registration no. CG04-JA-1074, as the said Truck was parked on the road in a negligent manner without parking light or indicator. The offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellants/claimants submits that though he has raised various grounds in his memo of appeal for assailing the award, however, he is confined his argument only to the extent that the Tribunal was not justified in holding the deceased to the extent of 30% and further he was not justified in granting any amount towards future prospect.

In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680

5. On the other hand, learned counsel for the respondents supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.

7. So far as non grant of future prospect by the Tribunal is concerned, considering the age of the deceased as has been assessed by the Tribunal i.e. 28 years and the nature of his job, keeping in view the Hon'ble Supreme Court in the matter of Pranay Sethi (supra), the Tribunal should have granted 40% towards future prospect, however, it has not been awarded by the Tribunal. So far as other calculation i.e. income of the deceased, application of multiplier, deduction towards personal and living expenses and amount awarded under the conventional heads is concerned, the same is not challenged, therefore, the claimants are held entitled for compensation in the following manner:-

Sl.No.

Heads

Calculation

(in rupees)

1.

Income of the deceased

Rs.4,000/- x 12 = Rs.48,000/-

2.

40% towards future prospect

Rs.19,200/- Rs.48,000/-

+ Rs.19,200/- = Rs.67,200/-

3.

1/2 deduction towards personal and living expenses of the deceased

Rs.33,600/- Rs.67,200 -

Rs.33,600/- = Rs.33,600/-

4.

Multiplier of 17 to be applied

Rs.33,600 x 17 = Rs.5,71,200/-

5.

Towards loss of estate, loss of love and affection and funeral expenses

Rs.1,05,000/- (as awarded by the Tribunal)

Total compensation

Rs.6,76,200/-

8. So far as contributory negligence of the deceased is concerned, from perusal of the material available on record, it is seen that the deceased dashed the offending vehicle which was parked by the side of the road and there was sufficient source of light at the spot. Therefore, considering the over all facts and circumstances of the case, the manner in which the accident occurred, this Court is of the opinion that the Tribunal has committed no illegality in holding the deceased negligent to the extent of 30%. Thus, the claimants are held entitled for the compensation of Rs.6,76,200/- x 70/100 = 4,73,340/-.

9. Since the Tribunal has already awarded Rs.3,59,100/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,14,240/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.