(2025) 04 JH CK 1316

In the Jharkhand High Court

Case No : Misc. Appeal No.10 Of 2015

Sabina Khatoon APPELLANT

Vs

National Insurance Company Limited RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:
Motor Vehicle Act, 1988 — Section 166, 171

Citation : (2025) 04 JH CK 1316

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : P.C. Sinha, Alok Lal, Santosh Kumar

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Claimants are in appeal for enhancement of compensation awarded under Sections 166 and 171 of the Motor Vehicle Act in M.V. Claim Case No.22 of 2011.

2. Finding of facts recorded by the learned trial Court regarding death of Md. Uddin Ansari in motor vehicle accident involving truck bearing registration no.HR 37A 6178 which was being driven by him and dashed against the standing truck on 22.02.2011, is not in dispute.

3. The appeal has been filed mainly on the ground that the monthly income of the deceased was Rs.10,000/-, but the learned Tribunal has accepted Rs.4000/- as his monthly income.

4. Further, it is contended that stationary truck was parked on the road which resulted in the accident and therefore, deduction of 50% of the compensation amount as contributory negligence was not just and proper.

5. It is also argued that no compensation has been awarded under the head of loss of earning and future prospect and meagre amount has been allowed so far conventional heads are concerned. It is submitted by the learned counsel on

behalf of appellants that apart from the oral evidence in support of income of Rs.10,000/- per month, salary certificate issued by the employer- Tejinder Singh (owner of vehicle bearing registration no.HR 37A 6178) has also been adduced into evidence and marked as Exhibit 1. As per the salary certificate, he was getting a salary of Rs.4000/- and Rs.2000/- as commission for each truck and used to make almost three trips monthly, thereby, his monthly income came to Rs.10,000/-. However, learned Tribunal has accepted only Rs.4000/- as monthly income and has disagreed the commission which was the main component of the income of the deceased.

6. With regard to the contributory negligence, it is submitted, and rightly so, by the learned counsel on behalf of Insurance Company, Mr. Alok Lal that, there is no evidence in support of the contention that accident occurred wholly due to the fault on the part of the stationary truck. The FIR which is part of the record, was lodged against the deceased, who was driving the vehicle which resulted in accident. After investigation, final form was submitted stating therein that accident had occurred due to negligence on the part of the deceased. Further, the claimant witness- C.W. 3, who was cleaner of the truck and was travelling with the deceased in the same vehicle at the time of accident, has also not stated anything in support of the claimant's case that accident took place due to wrong parking of the truck.

7. I, therefore, find much force in the argument advanced on behalf of Insurance Company that there is no infirmity in the finding regarding contributory negligence on the part of the deceased causing the accident.

8. Coming to the monthly income of the deceased, it is a consistent case of the claimants that he was having a monthly income of Rs.10,000/-out of which Rs.4000/- was salary and Rs.6000/- he earned by way of commission. This part of the testimony has come both in oral as well as documentary evidence. This Court is of the view that learned Tribunal erred in completely excluding the monthly income earned by way of commission and only taking monthly salary of the deceased. It is true that income from the commission, cannot be consistent and is likely to fluctuate. Even if it is assumed that there was fluctuation in the commission, it can reasonably be inferred that the deceased was having a monthly income of Rs.4000/- from salary and Rs.4000/- from commission. Taking monthly income of Rs.8000/-and 30 years as the age of the deceased at the time of accident and 1/4 deduction on the personal and living expenses of the deceased, considering the six dependents, who are claimants in the present case, the final compensation will be work out as under: -

Annual Income Rs.8000 x 12

Rs. 96,000/-

Annual dependency after deducting ¼ on the living and personal expenses of the deceased

Rs.96,000/- - Rs.24,000/- = Rs.72,000/-

Loss of dependency on taking a multiplier of 17

Rs.12,24,000/-

Future prospect @ 40%

Rs. 4,89,600/-

Conventional head

Rs.84,000/-

Total

Rs.17,97,600/-

9. In view of the contributory negligence on the part of the deceased, who was driving the vehicle at the time of the accident, the claimants shall be entitled to 50% of the total compensation i.e. Rs.8,98,800/- with interest @ of 6% per annum on the compensation amount from the date of filing of claim application from the Insurance Company. The Insurance Company is accordingly directed to make payment of the compensation amount to the Tribunal within a month of this order. Amount to be disbursed to the claimants by the Tribunal as per the term fixed by it and shall be adjusted to the final compensation amount.

Miscellaneous Appeal is allowed. Interlocutory Application, if any, is disposed of.