

(2014) 02 CHH CK 0065
In the Chhattisgarh High Court
Case No : M.A. (C) No. 1028 of 2012

Sangappa Nigappa Chamoji and Others

APPELLANT

Vs

Konds and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Citation : (2015) 4 ACC 317 : (2015) ACJ 2148 : (2014) 2 CGLJ 529

Hon'ble Judges : Pritinker Diwaker, J.

Bench : Single Bench

Advocate : Goutam Khetrapal, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

Pritinker Diwaker, J. This appeal filed by the claimants arises out of the award dated 13.12.2011 passed by III Additional Motor Accident Claims Tribunal, Raipur (in short "the Tribunal") in Claim Case No. 233/2011 whereby in a death case compensation of Rs. 4,94,820/- has been awarded in favour of the claimants. Facts of the case in brief are that on 27.5.2009 while Suresh Chamoji, who was working as Constable in 139th Battalion of CRPF, along with his fellow constables was traveling in a truck, the said truck was dashed by a dumper bearing registration No. C.G. 04-J.B.-2847 resulting in instantaneous death of Suresh Chamoji.

2. A claim case was filed by the claimants, who are mother and father of the deceased, before the Tribunal for compensation of Rs. 23,35,000/- under various heads, inter alia, pleading that at the relevant time, the deceased was 25 years of age, he was a permanent government employee, working as Constable and drawing salary of Rs. 13,000/- per month.

3. However, learned Tribunal by the impugned award granted a total compensation of Rs. 4,94,820/- with interest @ 6% on the following basis:

(i) that though salary of the deceased was Rs. 11,547/- per month but since

after the death of the deceased, his mother was getting family pension of Rs. 3,500/- per month, the same is liable to be deducted from the monthly income of the deceased and after making such deduction, the loss of monthly income would come to Rs. 8,047/- i.e. Rs. 96,564/- per annum.

(ii) that as per official record the deceased was 25 years of age and was bachelor, hence 50% i.e. 48,282/- is liable to be deducted from his annual income towards his personal and living expenses;

(iii) that multiplier of 10 is applicable in the present case;

(iv) that under conventional heads i.e. towards loss of love & affection and for funeral expenses, the claimants are entitled for a total amount of Rs. 12,000/-.

4. Learned counsel for the appellants submits that amount awarded by the Tribunal is on the lower side and the same is required to be enhanced for the following reasons:

(i) that the monthly income of the deceased was Rs. 11,547/-, and there was no occasion for the Tribunal to deduct any amount from it;

(ii) that promotional prospect/advancement in future income has not been considered by the Tribunal whereas in view of law laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , in the present case, there should be an addition of 50% of the actual salary to the actual salary of the deceased towards future prospects;

(iii) that the multiplier of 10 applied by the Tribunal is patently illegal and considering the age of the deceased, it should have been 18 as has been held in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , and M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, ;

(iv) that the amount awarded towards conventional heads i.e. Rs. 12,000/- is also on much lower side and needs to be enhanced suitably.

5. On the other hand, supporting the impugned award it has been argued by learned counsel for respondent No. 3 that considering the age of the claimants, the multiplier of 10 has rightly been applied by the Tribunal and applicability of multiplier of 18 would be excessive in the eye of law. He submits that deduction of income tax is also required to be done from the salary of the deceased for computing the compensation. He lastly argues that under the conventional heads, the Tribunal has rightly awarded the amount of Rs. 12,000/-, which requires no enhancement.

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

7. From the pleadings and documents it is apparent that at the relevant time, the deceased was 25 years of age, he was a bachelor, was working as Constable in CRPF and his monthly income was Rs. 11,547/-.

8. As regards deduction of family pension of Rs. 3,500/- received by claimant-

mother/appellant No. 2 from the monthly income of the diametrical i.e. Rs. 11,547/-, in view of the principles of law laid down by the Apex Court in the matters of Vimal Kanwar and Others Vs. Kishore Dan and Others, ; Helen C. Rebello (Mrs.) and others Vs. Maharashtra State Road Transport Corporation and another and Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others, , for the purpose of computing compensation the family pension is not liable to be deducted from the salary of the deceased. As such, for the purpose of calculating compensation, in the instant case, the monthly income of the deceased would be Rs. 11,547/-. Admittedly, the deceased at the relevant time was 25 years of age and was in a permanent government job. Therefore, as per law laid down in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , there is required to be an addition of 50% of the actual salary i.e. Rs. 5,773/- to the actual salary i.e. Rs. 11,547/- towards future prospects of the deceased. After making such addition, the monthly income of the deceased would be Rs. 17,320/- i.e. Rs. 2,07,840/- per annum.

9. The incident took place on 27.5.2009 and as per income tax slab for the financial year 2010-2011, there was no tax liability up to income of Rs. 1.60 lacs per annum and above it up to Rs. 3 lacs was taxable @ 10%. In the case on hand, the annual income is Rs. 2,07,840/-, meaning thereby Rs. 47,840/- is the taxable income @ 10% which comes to Rs. 4,784/-. After deducting this tax amount of Rs. 4,784/-, the annual income of the deceased would come to Rs. 2,03,056/-. Since the deceased was bachelor and claimants are parents only, therefore, 50% is to be deducted from the annual income of the deceased towards his personal and living expenses. After making such deduction, the annual loss of dependency would come to Rs. 1,01,528/-, which looking to the facts and circumstances of the case deserves to be and is rounded off to Rs. 1 lac. As the deceased was 25 years of age, therefore, multiplier of 18 will be applicable in the present case {vide Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, and M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, . After applying this multiplier, the total loss of dependency would come to Rs. 18 lacs (Rs. 1 lac x 18).

10. As regards the amount awarded towards conventional heads, in the facts and circumstances of the case, the same appears to be on the lower side and is required to be enhanced suitably. Accordingly, the amount of Rs. 10,000/- awarded towards loss of love and affection is enhanced to Rs. 25,000/- and likewise the amount of Rs. 2,000/- awarded towards funeral expenses is enhanced to Rs. 20,000/-. The Tribunal has not awarded any sum towards transportation of dead body, but this Court feels it proper to award a sum of Rs. 10,000/- under this head and the same is awarded accordingly.

11. In view of what has been discussed above, the claimants are held entitled for a total sum of Rs. 18.55 lacs. Since the Tribunal has awarded compensation of Rs. 4,94,820/-, the appellants/claimants are now entitled for an additional compensation of Rs. 13,60,180/-. This additional amount of compensation of Rs.

13,60,180/- shall carry interest @ 6% per annum as awarded by the Tribunal from the date of filing of claim petition till its realization. In the result, the appeal is allowed and the award impugned is modified to the aforesaid extent.