
(2002) 02 JH CK 0060

In the Jharkhand High Court

Case No : Appeal from Original Order No. 140 of 1997

Santosh Kumar Sultania and Another

APPELLANT

Vs

Ratanlal Surajmal and Others

RESPONDENT

Date of Decision : 07-02-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2004) ACJ 1375 : (2003) 1 ACC 456

Hon'ble Judges : Hari Shankar Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : M.K. Dey, for the Appellant; S.N. Lal and G.C. Jha, for the Respondent

Final Decision : Allowed

Judgement

1. Admittedly Manoharlal Sultania of Mohalla Tambaku Patti of Chai-basa town left behind three sons, Santosh Kumar Sultania, Balram Prasad Sultania and Krishna Kumar Sultania.
2. On 15.7.1986, Krishna Kumar Sultania, who was aged about 21 - 1/2 years and was unmarried, while coming from Ranchi to Chaibasa on a Jeep (BRS-6471) died, when a Bus (BHN-9915) coming from opposite direction in a very high speed dashed the Jeep.
3. Parents of the deceased were not alive. His two brothers filed claim application u/s 110A of the Motor Vehicles Act, 1939, for compensation.
4. The Tribunal by impugned judgment and award dated 29.1.1997 held that claimants were not dependent on earnings of the deceased and, therefore, they were not entitled to receive any compensation under the head "loss of the dependency". It was further held that claimants were entitle to compensation only under the head "for loss of estate and allowed only Rs. 15000/- which they had already receive earlier by way of interim compensation.

5. It is well settled that brother of a person who dies in a motor vehicle accident is entitled to maintain a petition u/s 110A of the Act, if he was a legal representative of the deceased and if he was dependent upon the deceased, tribunal has no justification to deny him compensation under the Act.

6. In the present case one of the claimants who examined himself as AW 1 stated that he and his two brothers were living jointly. His youngest brother was a contractor of Zilla Parishad and REO & died in the accident in question. He was a bachelor and was contributing his earnings to the joint family. In cross-examination the said witness stated that he had no personal business. The deceased had started contract work with joint family fund and the family was dependent on his income.

7. In paragraph 18 of the impugned judgment the tribunal discussed evidence of AW 1. Nothing was brought on record to the contrary that there was partition amongst three brothers and the deceased was separate from the claimants and was doing contract works independently with which the claimants had no concern.

8. In such circumstance, we find that the tribunal erred in observing that claimants were not dependent on earnings of the deceased and, therefore, were not entitled to any compensation for loss of dependency.

9. The tribunal has not calculated compensation amount according to provisions of the Act. Neither monthly income of the deceased was assessed nor annual dependency was calculated not appropriate multiplier was applied thereto.

10. We, therefore, set aside the impugned judgment and award and remit the case to the tribunal for deciding it afresh in accordance with law on the basis of materials already on record. The Tribunal is directed to dispose of the case within two months from the date of receipt/communication of a copy of this order.