(2009) 07 CHH CK 0013

In the Chhattisgarh High Court

Case No : M.A. No. 1097 of 2005

Savita Bai (Smt.) and Others — APPELLANT

Vs

Vinod Kumar Sahu and Others — RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166, 170

Citation : (2009) 3 MPJR 147

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.—These appeals have been filed against the award dated 10.8.2005 passed in Claim Case No. 13/2005 by the Second Additional Motor Accident Claims Tribunal (F.T.C.), Mungeli, District Bilaspur (CG). M.A.No. 306/2006 has been filed by the National Insurance Company for reducing the quantum of award, whereas, M.A. No. 1097/2005 has been filed by the claimants for enhancement of the amount of compensation.

2. The facts, briefly stated, are as under:

The claimants are the widow, minor children and parents of deceased Ash Kumar Sahu who died in the motor accident. The claimants filed a Claim Petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 35,75,000/- on account of death of deceased Ash Kumar Sahu, which took place on 17.1.2005 when the motorcycle which the deceased was driving, was dashed by the offending vehicle (Tata-407) bearing registration No. CG-10 ZB 1476 on account of rash and negligent driving of the said vehicle by its driver resulting into his instantaneous death. The claimants pleaded that the deceased was earning Rs. 250-300/- per day from his kirana shop in village Salheghori. Besides the above, he was also earning Rs. 75,000/- per annum from the agriculture land. The owner of the vehicle remained ex-parte. The driver of the vehicle filed his written statement denying the contentions of the claimants and pleaded that he was not driving the vehicle rashly and negligently, therefore, the claimants were not entitled to receive compensation. The Insurance Company also filed its written statement denying the contentions of the claimants. They further took the plea that the vehicle was being plied in breach of policy conditions as the driver of the vehicle was not having a valid license on the date of accident.

The Insurance Company was also granted permission u/s 170 of the Motor Vehicles Act on 18.7.2005.

The claimants examined Savita Bai (AW-1), Raghunath Sahu (AW-2) and Keshav Sahu (AW-3) in support of their Claim Petition, whereas the Insurance Company examined one Sudarshan Das (NAW-1) in rebuttal.

Learned Claims Tribunal recorded finding that the accident occurred on account of rash and negligent driving of the offending vehicle (Tata-407) by its driver and the insurer of the said vehicle was liable to pay compensation. It further held that the deceased was earning Rs. 6,000/- per month and Rs. 72,000/- per annum. By deducting 1/ 3rd towards the personal expenses of the deceased, the annual dependency of the claimants was assessed to Rs. 48,000/-. The Tribunal applied multiplier of 18 and the compensation was worked out to Rs. 8,64,000/-. By adding further sum of Rs. 7,000/- under other heads, the total amount of compensation was worked out to Rs. 8,71,000/-. The Tribunal also awarded interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till its realization.

3. Learned counsel appearing on behalf of the claimants argued that the income of the deceased has not been assessed properly and a low compensation has been awarded.

4. On the other hand, learned counsel for the Insurance Company opposed these arguments. He further contended that a high income has been assessed and the highest multiplier has been applied, therefore, the quantum of compensation should be suitably reduced.

5. We have heard the learned counsel for the parties at length and have also perused the records of the claim case.

6. So far as assessment of the income is concerned, AW-1, Savita Bai, stated on oath, that the deceased was having a kirana shop in village Salheghori, from which he was earning Rs. 250-300/- per day. It was the only kirana shop in the village. The deceased had 6 acres of agriculture land, in which, they were cultivating paddy, wheat and gram etc. She stated that in fact, the deceased was earning Rs. 8,000/- per month from the kirana shop. In support of the fact that the deceased was running a kirana shop, she had filed many documents like license etc. issued by the Excise Department to sell tobacco and various notices in relation to the shop issued from time to time. She has also filed the records of the agriculture land. The contents of the documents, filed by the claimants would show that the deceased was running a kirana shop in the village. She was cross examined at length on the point of income of the deceased but nothing material

could be brought on record on which it could be said that the deceased was not having such a kirana shop as pleaded by the claimants. It is in this state of evidence, the Tribunal assessed that the deceased was earning Rs. 200/- per day and Rs. 6,000/- per month from his said kirana shop. The Tribunal has not assessed any income of the deceased from agriculture land. After going through the entire material on record, we do not find any fault in the assessment of income of the deceased by the Tribunal. The same is based on oral testimony of AW-1, Savita Bai (widow of the deceased) as also the documents relating to the shop field by her. Therefore, we affirm the finding of the Tribunal that the deceased was earning Rs. 6,000/- per month and Rs. 72,000/- per annum from his kirana shop which was being run in village Salheghori and the arguments relating to assessment of income of the deceased cannot be accepted.

7. So far as quantum of compensation is concerned, Mr. Raj Awasthy, learned counsel appearing on behalf of the Insurance Company, argued that the multiplier of 18 selected by the Tribunal was extremely higher. The Tribunal has selected the multiplier of 18 on the basis of Schedule prescribed u/s 163A of the Motor Vehicles Act holding that the deceased was in between 25-30 years of age. Admittedly, the claim was not filed u/s 163-A of the Motor Vehicles Act, therefore, the multiplier prescribed in the Schedule was not binding on the Tribunal. In a Claim Petition filed u/s 166 of the Motor Vehicles Act, the Tribunal has to see that a just and proper compensation has to be awarded and every efforts should be made with a view to arrive at a just and proper compensation. The Apex Court has said time and again that in a claim case, the amount of compensation should neither be a meager amount nor a bonanza. It has to be borne in mind that the compensation is not expected to be windfall for the victim. The statutory provisions clearly communicate that the compensation must be just. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just and which would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration and requires judicious approach. The expression "just" denotes equitability, fairness, reasonableness and non-arbitrariness. Please see State of Haryana and Another Vs. Jasbir Kaur and Others, and Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, .

8. Keeping in mind the principles referred to above in various decisions of the Apex Court as also the fact that the deceased was aged about 29 years and the widow has been shown to be aged about 26 years and there are 4 minor children aged about 10 years, 8 years, 6years & 4 years and that the parents were also depended upon the deceased and further that it was a Petition filed u/s 166 of the Motor Vehicles Act, we deem it appropriate to apply the multiplier of 14 in this case and to re-compute the compensation.

9. By applying the multiplier of 14 to the annual dependency of Rs. 48,000/-, the compensation works out to Rs. 6,72,000/-. By adding a further sum of Rs. 15,000/- under the other permissible heads, the total amount works out to Rs. 6,87,000/-, which the claimants are entitled to receive as compensation on account of death of deceased Ash Kumar Sahu in the motor accident. The claimants are also entitied to receive interest on the said amount of Rs. 6,87,000/- at the rate of 6% per annum from the date of filing of the Claim Petition till 7.9.2006 only because,it has been stated at bar that the Insurance Company has already deposited Rs. 7,50,000/- as the final amount of compensation on the basis of impugned/award on 7.9.2006 and Rs. 50,000/-was deposited earlier by them.

10. In the result, M.A. No. 1097/2005, filed by the claimants for enhancement of the amount of compensation is dismissed and M.A. No. 306/ 2006, filed by the Insurance Company, is allowed to the extent indicated above.

11. No orders as to the cost.