(2012) 12 PAT CK 0004

In the Patna High Court

Case No : Misc. Appeal No. 912 of 2010

Sita Devi and Others — APPELLANT

Vs

Satrughan Prasad Singh and Others — RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173

Citation : (2013) 3 PLJR 376

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Mukesh Prasad Singh, for the Appellant; Ashok Priyadarshi, for the Respondent

Judgement

Rakesh Kumar, J.—Heard Sri Mukesh Prasad Singh, teamed counsel for the appellants and Sri Ashok Priyadarshi, learned counsel, who has appeared on behalf of respondent No. 3/- Divisional Manager, National Insurance Co. Ltd., Muzaffarpur. The present appeal u/s 173 of the Motor Vehicles Act, 1988, has been preferred against judgment dated 12.7.2010 and award dated 20.7.2010 passed by Sri Shailendra Kumar Pandey, 6th Additional Motor Vehicle Accident Claims Tribunal-cum-Additional District & Sessions Judge, Muzaffarpur (hereinafter referred to as "the Tribunal"), in Claim Case No. 114 of 2007. By the said judgment and award the learned Tribunal has directed the respondent No. 3 to make payment of total compensation amount of Rs. 1,34,500/-. The said amount has been directed to be paid after deducting Rs. 50,000/- which was paid as interim compensation u/s 140 of the Motor Vehicles Act.

2. In sum and substance, the appeal has been preferred for enhancement of the compensation amount. Since no cross appeal has been preferred by respondent No. 3, who has been directed to pay the compensation amount and the appeal has been preferred only for enhancement of the compensation amount, there is no need to discuss the evidences and merit of the case in detail. Despite valid service of notice, the respondent Nos. 1 & 2 have preferred not to appear.

3. Short fact of the case is that, on 13.5.2007, in a vehicular accident husband of appellant No. 1 died. Since in the accident tractor bearing registration No. B.R. 06F2384 was involved, which was under insurance cover of respondent No. 3 at the time of accident, after death claim petition was filed claiming total compensation amount of Rs. 3,21,500/-. Before the Tribunal evidences were brought on record. The respondent No. 3/insurance company also appeared.

4. The teamed Tribunal after hearing the parties and considering the evidence on record has allowed the claim petition and directed the Respondent No. 3/insurer of offending vehicle to pay compensation amount as indicated above.

5. Learned counsel for the appellants submits that in this case accident had occurred in the year 2007 and the learned Tribunal considering notional income as Rs. 15,000/- per annum, as prescribed under the M.V. Act, has calculated the compensation amount. He submits that though amount of Rs. 15,000/- is prescribed as notional income as per Schedule-II of the Motor Vehicles Act but the same amount was introduced long back in the year 1994, and keeping in view this fact, on number of occasions, it was held to consider the notional income on higher scale. He submits that in a case in which accident had occurred in the year 2004, the Hon''ble Supreme Court in a case reported in Laxmi Devi and Others Vs. Mohammad Tabbar and Another, has considered the notional income as Rs. 36,000/- per annum, treating the income as Rs. 100/- per day, and as such, same income was claimed by the claimants before the Tribunal, but the learned Tribunal ignoring the settled principle of law has preferred to calculate compensation on the basis of Rs. 15,000/- as notional income. According to learned counsel for the appellants the amount of notional income requires to be enhanced from Rs. 15,000/- to Rs. 36,000/-. Similarly, it has been argued that the personal expenses of the deceased should have been deducted as 1/4th from the income but the learned Tribunal has deducted 1/3rd. In support of his argument he has relied on a judgment of Apex Court reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . He has specifically referred to paragraph No. 30 of the judgment, which states that in case of number of dependent of deceased is 4 and up to 6, deduction should be 1/4th. Learned counsel for the appellants has further prayed for granting 30% additional amount as future prospect. On aforesaid grounds, he has prayed for enhancement of compensation amount and modification of the impugned judgment and award.

6. Sri Ashok Priyadarshi, learned counsel appearing on behalf of respondent No. 3 has taken very fair stand. He agrees with the principle regarding notional income as well as grant of deduction as personal expenses as has been reiterated by the Apex Court, and as such, he is not making any opposition regarding enhancement of the notional income from Rs. 15,000/- to Rs. 36,000/- as well as for deducting 1/4th instead of 1/3rd as personal expenses. So far future prospect is concerned, he submits that keeping in view the fact that compensation amount has been directed to be paid as per statutory provision contained in the Motor

Vehicles Act, in absence of any contrary statutory provision, said relief may not be granted.

7. In view of the fact that learned counsel for the respondent No. 3 has accepted the proposition of law regarding enhancement of the notional income and deduction, there is no difficulty in modifying the judgment and award under aforesaid two heads. So far as grant of 30% additional amount as future prospect is concerned, the court is of the opinion that the appellants may not get the same due to simple reason that the compensation amount was directed to be calculated in view of Schedule-II of the Motor Vehicles Act, and as such, contrary to the statutory provision the appellants may not get any other benefit. In view of the facts and circumstances, the compensation amount is directed to be enhanced in following terms:--

Monthly income of the deceased = Rs. 3,000/-

Annual income of the deceased = Rs. 3,000/- x 12 = Rs. 36,000/-

Annual dependence after deducting 1/4th as personal expenses of the deceased = Rs. 27,000/- [Rs. 36,000/- -- Rs. 9,000/- (1/4 x Rs. 36,000/- = Rs. 9,000/-) = Rs. 27,000/-]

Adopting multiplier of 13 as per 2nd Schedule of M.V. Act since the age of the deceased at the time of accident was 50 years, the compensation would be Rs. 3,51,000/- (i.e. Rs. 27,000/- x 13 = Rs. 3,51,000/-)

Funeral expenses, loss of estate and loss of consortium = Rs. 9,500/-

Accordingly, total compensation amount comes to Rs. 3,60,500/- (i.e. Rs. 3,51,000/- + Rs. 9,500/- = Rs. 3,60,500/-)

8. Accordingly, the respondent No. 3 is directed to pay the aforesaid compensation amount after deducting amount which has already been paid to the appellants within a period of two months from the date of receipt/production of a copy of his order. On remaining amount the respondent No. 3 is further directed to pay interest at the rate which has been directed to be paid by the Tribunal i.e. @ 6% per annum from the date of filing of he claim petition till the date of payment. With above observation and modification, the appeal stands allowed.

