(2016) 01 TP CK 0037

In the Tripura High Court

Case No : MAC App. No. 85 of 2012

Smt. Budhulakshi Debbarma APPELLANT

Vs

State of Tripura RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Citation : (2016) 3 ACC 127 : (2017) ACJ 553 : (2016) 3 CivilLJ 460 : (2016) 2 TAC 673

Hon'ble Judges : Mr. Deepak Gupta, C.J

Bench : Single Bench

Advocate : Mr. S.B. Debnath, Advocate. IN MAC App. No. 85/2012, Mr. N. Majumdar, Advocate. IN MAC App. No. 120/2012, for the Appellant; Mr. N. Majumdar, Advocate. IN MAC App. No. 85/2012, Mr. S.B. Debnath, Advocate. IN MAC App. No. 120/2012, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Deepak Gupta, C.J - (Oral) These two appeals are being disposed of by a common judgment since both the petitions arise out of one award passed by the learned Motor Accidents Claims Tribunal (for short, the Tribunal).

2. The claimants, Budhu Laxmi Debbarma and Pradip Kumar Debbarma have filed the claim petition alleging that their son Pintu Debbarma, who was about 20 years old, died as a result of injuries received in a motor vehicle accident. The allegations are that the deceased after performing his duties was returning from Jwalchera towards Battalion Head Quarters at Lalcherra by the vehicle owned by the State. This vehicle met with an accident and the claimants alleged that the accident had taken place due to rash and negligence driving of the deceased. The learned Tribunal assessed the income of the deceased at Rs.10,345/-, deducted Rs.140/- on account of professional tax and taking the balance amount of Rs.10,205/- added 50% towards the future prospects of the deceased and therefore, took the monthly salary at Rs.15,307.50/-. Income for 13 months was taken because it was proved that in the Tripura Police an employee is paid for 13

months instead of 12 and, therefore, the yearly income was taken at Rs.1,98,998/-. 50% was deducted for the personal expenses of the deceased and multiplier of 14 was applied taking into consideration the age of the parents and compensation was assessed at Rs.13,92,986/-. In addition thereto, Rs.2000/- was awarded for funeral expenses and a total compensation of Rs.13,94,986/- was awarded.

3. One appeal has been filed by the claimants. In this petition the main grievance is that the multiplier would be 18 and not 14 because if 50% is being deducted the age of the deceased has to be taken into consideration. It is also urged that the amount awarded for funeral expenses is on the lower side and that no amount whatsoever has been awarded for loss of love and affection of the son. On the other hand, the State has also filed an appeal in which it is alleged that the income has wrongly been taken at Rs.10,345/- per month because, in fact, the income was only Rs.6,533/- per month.

4. I have heard the learned counsel for the parties. It is indeed unfortunate that the State should file an appeal taking a totally false stand. It may be true that as per the last pay certificate the salary of the deceased was Rs.6,533/- per month. This salary was payable for the month of June, 2007. This Court can take judicial notice of the fact that on and w.e.f. 1st January, 2006 due to the recommendations of the 6th Pay Commission there was revision of salary and due to revision of salary the Commandant of the 8th Battalion, T.S.R.(I.R-III) issued a certificate stating that on revision the salary of the deceased would have been Rs.10,345/- per month and Rs.140/- would have to be deducted for professional tax. It is indeed shocking that the State should come up with a false plea with regard to salary. Any party to a litigation has a right to challenge the order passed against it by any Court. When the State is a litigant, it is expected that the State shall be a fair litigant. The State is expected to come to Court with clean hands. It was not difficult for the State to tell this Court that on revision the salary would have been an exact amount. Instead of doing that the State has chosen to rely upon the last pay certificate which is meaningless because the last pay certificate after revision of the pay scales would have been totally different.

5. The second stand of the argument on behalf of the State is that future prospects cannot be taken into consideration. The learned trial Court has relied upon the judgment of the Apex Court in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., [AIR 2009 SC 3104]. Not only in this judgment but in various judgments thereafter, the Apex Court has repeatedly held that 50% should be added to the income of the deceased, especially when the deceased is in organised employment, in view of the future prospects. In this case the deceased was only about 20 years old. He had a long career ahead of him and 50% is the barest minimum which should have been added. Therefore, I find no error in the assessment of the income by the learned Court below and I, therefore, accept the yearly loss of dependency to be Rs.99,499/- i.e. 50% of Rs.1,98,998/-.

6. This Court follows two methods while assessing compensation. In those cases

where the claimants are parents and the deceased was unmarried, 50% is deducted for the personal expenses of the deceased and in such eventuality, the multiplier is applied by taking into consideration the age of the deceased. In case, the multiplier is to be applied by taking into consideration the age of the claimants, then only ?rd should be deducted for the personal expenses of the deceased.

7. In this case the age of the deceased is shown to be about 20 years. Since I have deducted 50% from the annual income to calculate the dependency of the parents, the multiplier will have to be applied keeping in view the age of the parents and, therefore, the compensation payable for loss of income comes to Rs.99,499x18=Rs.17,90,982/- which is rounded off to Rs.17,91,000/-. In addition thereto, the claimants are entitled to Rs.20,000/- on account of funeral expenses and Rs.50,000/- for loss of love and affection of their son. The total compensation, therefore, works out to Rs. (17,91,000 + 20,000 + 50,000)=Rs.18,61,000/-.

8. In view of the above discussion, the appeal filed by the claimants is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.13,94,986/- to Rs.18,61,000/-i.e. by Rs.4,66,014/-. On this amount the claimants shall be entitled to interest @ 9% per annum from the date of filing of the claim petition till deposit of the amount. The State has already satisfied the award. Therefore, it is directed to deposit the enhanced amount of compensation along with interest @ 9% per annum from the date of filing of the claim petition till payment/ deposit of the awarded amount in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

9. The amount is apportioned as follows:

Smt. Budhu Laxmi Debbarma

:

Rs. 15,00,000/-; and

Sri Pradip Kumar Debbarma

:

Rs. 3,61,000/.

The amount payable to Sri Pradip Kumar Debbarma, along with proportionate interest, shall be released in his favour on deposit. Out of the amount payable to Smt. Budhu Laxmi Debbarma, Rs.5,00,000/- shall be released immediately. The balance amount shall be kept in a fixed deposit for 5 years at the first instance. The interest payable on the said fixed deposit shall be paid to her on quarterly basis and after 5 years a sum of Rs.2,00,000/- out of the amount deposited shall be released in her favour every year till the entire amount is paid to her.

10. The appeal filed by the claimants is allowed and the award of the Tribunal is enhanced as aforesaid. The appeal filed by the State is dismissed. Since the State has taken a totally false stand, it is burdened with costs of Rs. 5000/-.

11. The appeals are disposed of in the aforesaid terms.

12. Send down the lower court records forthwith.

