(2012) 11 CHH CK 0034

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal No. 845 of 2005

Smt. Hemlata Nayak and Others APPELLANT

Vs

Gulab Rabbani and Others RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173, 95

Citation : (2012) 3 CG.L.R.W. 290

Hon'ble Judges : Satish K. Agnihotri, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Prafull Bharat, for the Appellant;

Final Decision : Allowed

Judgement

1. By the instant appeal, preferred u/s 173 of the Motor Vehicles Act, 1988 (henceforth ''the Act, 1988''), the appellants/claimants seek enhancement of the amount of compensation awarded under the award dated 20-12-2004 by 1st Additional Motor Accidents Claims Tribunal, Jagdalpur in Claim Case No. 33/2002. The Claims Tribunal awarded compensation of Rs. 1,03,000/- to the appellants/ claimants. The appellants/claimants filed a claim petition against the respondents/non-claimants u/s 166 of the Act, 1988 claiming compensation of Rs. 41,40,000/- for the death of Bhajan Nayak in a motor accident, which took place on 14-11-2000. Appellant No. 1 Smt. Hemlata Nayak is widow, appellant No. 2 Smt. Rekha Nayak is mother, appellants No. 3 and 4 Bhayank Nayak and Dushyant Nayak, respectively are sons and appellant No. 5 Monika Nayak is daughter of deceased Bhajan Nayak. At the time of accident, the deceased was employed in Veterinary Department and was aged about 36 years. On the date of accident, i.e., 14-11-2000, at about 9 a.m., the deceased was going to his office situated at Village Junagaon on his scooter bearing registration No. M.P. 25 AA 1963. On the way, the scooter stopped, therefore, he took the scooter at the side of the road and tried to re-start it. At that lime, a Hero Puch bearing Chasis Number CB-79222, coming from the opposite direction, being driven by

respondent No. 1 Gulab Rabbani rashly and negligently dashed the scooter of the deceased. The deceased fell down and sustained injuries. He was admitted in R.N.T. Hospital, Kondagaon, where he died during treatment. Crime No. 343/2000 was registered in Police Station Kondagaon vide First Information Report (Ex. P-1).

2. The Claims Tribunal, after hearing the parties and appreciating the evidence available on record, awarded a sum of Rs. 1,03,000/- as compensation in favour of the appellants/claimants holding respondents No. 1 and 2 liable for payment thereof.

3. Shri Prafull Bharat, learned counsel for the appellants/claimants argued that the Claims Tribunal wrongly deducted the amount of pension from the income of the deceased. He further argued that the amount of pension cannot be deducted from the income of the deceased. Hence, the amount of compensation awarded by the Claims Tribunal deserves to be enhanced suitably.

4. No one appeared on behalf of the respondents despite service of notice.

5. We have heard learned counsel for the appellants and have also perused the pleadings and the documents produced before the Tribunal.

6. The Claims Tribunal held that the monthly income of the deceased was Rs. 7,000/- and appellant No. 1, i.e., widow of the deceased had got compassionate appointment and was receiving Rs. 3,000/- as monthly salary. She was also getting pension amounting to Rs. 3,900/- per month. The Claims Tribunal deducted the amounts of monthly pension and the monthly salary and assessed the monthly income of the deceased as Rs. 1,000/-. This finding is not sustainable.

7. In United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., the Hon''ble Supreme Court observed thus:

35. It may be useful to quote para 33 of the decision which reads as under (SCC pp. 110-11).

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the ''pecuniary advantage'', liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

The Court has observed in the last part of para 34: (SCC p.111):

How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract.

Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law....

8. The amounts of pension, provident fund and LIC, being social security amounts and statutory benefits and which would have been available even otherwise to the appellants/claimants and not arising out of the same accident, are not deductible. We are of the view that the amount of pension cannot be deducted from the income of the deceased.

9. Smt. Hemlata (AW-1) deposed that after the death of her husband (deceased Bhajan Nayak), she received a sum of Rs. 3,00,000/- as provident fund of the deceased and was also receiving a sum of Rs. 3,900/- per month as pension. She had got compassionate appointment on the post of Clerk on account of death of her husband and was getting Rs. 3,000/- per months as salary.

10. Dr. Mahesh Singh Mandavi (AVV-3) deposed that deceased Bhajan Nayak was working under him as A.V.F.O. He had brought Last Pay Certificate (Ex. P-5) of the deceased. In Ex. P-5, monthly salary of the deceased is mentioned as Rs. 8,312/-, but there is no mention about deduction towards GPF (General Provident Fund), GIS (Group Insurance Scheme) etc.

11. Therefore, we determine monthly income of the deceased as Rs. 8,000/- and deduct 1/3rd share therefrom, i.e., Rs. 2,666/- towards his personal and living expenses. Accordingly, monthly dependency of the appellants/claimants comes to (Rs. 8,000-Rs. 2,666)=Rs. 5,334/-. Appellant No. 1 was getting monthly salary amounting to Rs. 3,000/-, therefore, after deducting this amount, the actual monthly dependency is assessed as Rs. 2,334/-, i.e., annual dependency as Rs. 28,008/-.

12. The Claims Tribunal applied multiplier of 16. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for the age group 36 to 40 years, the multiplier 15 is determined.

13. In the instant case, on the date of accident, the deceased was aged about 36 years, therefore, in the light of above principle laid down by the Hon''ble Supreme Court, the proper multiplier applicable in this case is 15. Hence, the compensation is computed as (Rs. 28,008/- x 15)=Rs. 4,20,120/-.

14. The Claims Tribunal held that the deceased was liable for contributory negligence to the extent of 50%. The Claims Tribunal, in paragraph 15 of the impugned award, assessed compensation to the tune of Rs. 1,92,000/- and deducing 50% therefrom towards contributory negligence of the deceased,

awarded compensation of Rs. 96,000/- in favour of the appellants/claimants. The Claims Tribunal also awarded a sum of Rs. 5,000/- for loss of consortium and Rs. 2,000/- for funeral expenses. In total, a sum of Rs. 1,03,000/- was awarded as compensation in favour of the appellants/claimants.

15. We have computed the compensation as Rs. 4,20,120/-. After deducting 50% therefrom towards contributory negligence of the deceased, the actual compensation comes to Rs. 2,10,060/-. After adding thereto the amount awarded by the Claims Tribunal under the heads loss of consortium and funeral expenses, the total compensation payable to the appellants comes to Rs. 2,17,060/-.

16. Thus, the appellants are entitled to the sum of Rs. 2,17,060/- as compensation awarded by the Claims Tribunal is enhanced by (Rs. 2,17,060-1,03,000)=Rs. 1,14,060/-. The enhanced amount of compensation of Rs. 1,14,060/- shall carry interest at the rate of 6% per annum from the date of filing the claim petition till realization. Respondents No. 1 and 2 shall deposit the total amount of compensation before the Claims Tribunal within three months from today. If any amount is already deposited towards compensation, the same shall be adjusted in the total amount of compensation of Rs. 2,17,060/- Accordingly, the appeal is allowed to the extent indicated above. There shall be no order as to costs.