(2011) 08 CHH CK 0033

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 551 of 2010

Smt. Kumari Bai Sharma and Another APPELLANT

Vs

Santosh Kay Johnson and Another RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 1 CGLJ 98

Hon'ble Judges : Rajeev Gupta, C.J;Rangnath Chandrakar, J

Bench : Full Bench

Advocate : Satyendra Sahu and Mr. Suresh Tandon, for the Appellant; S.S. Rajput, Advocate, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Shri Rajeev Gupta, C.J.—The unfortunate widow and son of deceased Dhanesh Prasad Sharma, are the appellants before us in this appeal for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Raipur (for short ''the Tribunal'') vide award dated 27.01.2010, passed in Claim Case No. 57/2009. As against the compensation of Rs. 21,70,000/- claimed by the appellants/ claimants, unfortunate widow and son of deceased Dhanesh Prasad Sharma, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 17.04.2009, the Tribunal awarded a total sum of Rs. 2,18,600/- as compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment.

2. The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Dhanesh Prasad Sharma died on account of the injuries sustained by him in the motor accident on 17.04.2009; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Maruti Alto Car bearing registration No. CG-04H/5077; as the above offending vehicle Maruti Alto Car on the date of the accident was insured with the Future Generally India Insurance

Company Limited and the insurance company could not establish any breach of the policy conditions, the Insurance Company was liable to pay compensation to the claimants.

3. As the respondents have not filed any appeal against the award, the above findings recorded by the Tribunal have now attained finality.

4. The Tribunal assessed the income of the deceased at Rs. 100/- per day and Rs. 2.400/- per month assuming that the shop of the deceased used to remain closed for about six days in a month; and Rs. 28,800/- per annum. By deducting 1/3rd of Rs. 28,800/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 19,200/- per annum. By multiplying the annual dependency of Rs. 19,200/- with the multiplier of 8, the compensation was worked out to Rs. 1,53,600/-. By awarding further sum of Rs. 65,000/- under other heads, the Tribunal awarded a total sum of Rs. 2,18,600/- as compensation to the claimants for the death of deceased Dhanesh Prasad Sharma in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 2,18,600/- @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment.

5. Shri Satyendra Sahu and Shri Suresh Tandon, learned counsel for the appellants submitted that the Tribunal has erred in assessing the monthly income of the deceased at Rs.2,400/- per month after having assessed his daily income at Rs. 100/-; in selecting the lower multiplier of 8; and in awarding low compensation of Rs. 2,18,600/- only.

6. Shri S.S. Rajput, learned counsel for respondent No. 2, the Future Generally India Insurance Company Limited, the insurer of the offending vehicle Maruti Alto Car, on the other hand, supported the award and contended that the compensation of Rs. 2,18,600/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

7. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

8. Now we shall examine as to whether the compensation of Rs. 2,18,600/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

9. The claimants pleaded that deceased Dhanesh Prasad Sharma used to earn Rs. 300/- per day from his kirana and general store and the Tribunal assessed his daily income at Rs. 100/-. As the claimants could not adduce any clinching evidence before the Tribunal to establish the daily income of the deceased at Rs. 300/-, we do not find any infirmity in the assessment of the daily income on the deceased by the Tribunal at Rs. 100/-.

10. Nevertheless, the Tribunal has apparently erred in assessing the monthly

income of the deceased at Rs. 2,400/- only after having assessed the daily income of the deceased at Rs. 100/-. In our opinion, the monthly income of the deceased ought to have been assessed by the Tribunal at Rs. 3,000/- and the annual income at Rs. 36,000/-. We, therefore, propose to recompute the compensation of the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum.

11. By deducting the usual l/3rd of Rs. 36,000/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs. 24,000/- per annum.

12. The multiplier of 8 selected by the Tribunal is on the lower side and requires reconsideration.

13. Considering that deceased Dhanesh Prasad Sharma was shown to be 55 years of age in his postmortem report and his widow Smt. Kumari Bai Sharma was shown to be 52 years of age in the claim petition, we are of the opinion that multiplier of 11 would be appropriate in the present case in view of the dictum of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein multiplier of 11 has been prescribed for the age group between 51 -55 years.

14. By multiplying the annual dependency of Rs. 24,0007- with the multiplier of 11, the compensation works out to Rs. 2,64,000/-. By awarding further sum of Rs. 5,000/- towards funeral expenses; Rs. 5,000/- for loss of estate; and Rs. 5,0007- for loss of consortium to the widow, the claimants become entitled to receive a total sum of Rs. 2,79,000/- as compensation for the death of deceased Dhanesh Prasad Sharma in the motor accident.

15. Learned counsel for the parties submitted that with a view to avoid any possible dispute between the parties before the Tribunal about the period for which the claimants are entitled to receive interest on the enhanced amount of compensation, the amount of interest on the enhanced amount of compensation may be quantified in this appeal itself.

16. Considering all the relevant aspects of the matter, including the delay in disposal of the claim petition, and the present appeal and the fact that the Insurance Company alone is not to be blamed for the entire delay in the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs. 60,400/- at Rs. 6,600/-.

17. For the foregoing reasons, the appeal filed by the appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 2,18,600/- awarded by the Tribunal is enhanced to Rs. 2,79,000/- with further quantified amount of interest of Rs. 6,600/- on the enhanced amount of compensation of Rs. 60,400/-.

18. Respondent No.2 the Future Generally India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 67,000/- (Rs.

60,400/- towards enhanced amount of compensation + Rs. 6,600/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 60,400/-) before the concerning Claims Tribunal. No order as to costs.