(2010) 03 CHH CK 0035

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 1327 of 2007

Smt. Kumari Bai Yadav and Others APPELLANT

Vs

Pratap Singh and Others RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A(1), 163A(3), 166

Citation : (2010) 2 CGLJ 460 : (2010) 2 CGLJ 455

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

Bench : Full Bench

Advocate : Shivendu Pandya, for the Appellant; Gautam Khetrapal, for Respondent No. 3/National Insurance Company Ltd., for the Respondent

Final Decision : Allowed

Judgement

Rajeev Gupta, C.J.—This is claimants'' appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Raipur (for short ''the Tribunal'') vide award dated 22.12.2006 passed in Claim Case No. 64/2006.

2. As against the compensation of Rs. 11,00,000/- claimed by the Appellants/ claimants, unfortunate widow, son and mother of deceased Jethuram Yadav, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 23.11.2005, the Tribunal awarded a total sum of Rs. 2,75,000/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

3. The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Jethuram Yadav died on account of the injuries sustained by him in the motor accident on 23.11.2005; the accident occurred due to rash and negligent driving of the driver of the offending vehicle truck; as the offending vehicle truck on the date of the accident was insured with the National Insurance Company Limited, the Insurance Company was liable to pay compensation to the claimants.

4. The Tribunal assessed the income of the deceased at Rs. 2,200/- per month.

By deducting 1/3rd of Rs. 2,200/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 1,467/- per month and Rs. 17,604/- per annum, which was rounded off to Rs. 17,600/-. By multiplying the annual dependency of Rs. 17,600/- with the multiplier of 15, the compensation was worked out to Rs. 2,64,000/-. By awarding further sum of Rs. 11,000/- under other heads, the Tribunal awarded a total sum of Rs. 2,75,000/- as compensation to the claimants for the death of deceased Jethuram Yadav in the motor accident on 23.11.2005. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 2,75,000/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

5. Shri Shivendu Pandya, Learned Counsel for the Appellants submitted that the Tribunal has erred in not accepting the claimants'' evidence about the income of the deceased and in assessing his income at Rs. 2,200/- per month only; in selecting the lower multiplier of 15; and in awarding low compensation of Rs. 2,75,000/- only.

6. Shri Gautam Khetrapal, Learned Counsel for Respondent No. 3 The National Insurance Company Limited on the other hand supported the award and contended that the compensation of Rs. 2,75,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

7. As the Respondents have not filed any appeal against the award, the findings recorded by the Tribunal that deceased Jethuram Yadav died on account of the injuries sustained by him in the motor accident on 23.11.2005; the accident occurred due to rash and negligent driving of the driver of the offending vehicle truck; and the insurer of the truck was liable to pay compensation to the claimants have now attained finality.

8. True, the claimants pleaded that deceased Jethuram Yadav used to earn Rs. 4,500/- per month by working as Grinder-Man, but the evidence led in that behalf was not of clinching nature. We, therefore, do not find any fault in the approach of the Tribunal in discarding the claimants'' evidence about the income of the deceased.

9. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 2,200/- per month is certainly on the lower side and requires reconsideration.

10. The Tribunal while discarding the claimants'' evidence about the income of the deceased ought to have assessed the income of the deceased on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act.

11. Section 163-A of the Act where under the Second Schedule was introduced in the year 1994 reads as follows:

163A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation - For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

12. The above quoted Sub-section (3) of Section 163-A of the Act mandated the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

13. As the Central Government has failed in amending the Second Schedule as provided in Sub-section (3) of Section 163-A of the Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

14. Now, reverting to the present case, the unfortunate accident in which deceased Jethuram Yadav lost his life took place in the year 2005. If the increase in the prices of essential commodities and the cost of living during the period between 1994 and 2005 are taken into consideration, the national income of Rs. 15,000/- prescribed in the Second Schedule in the year 1994 would certainly come to Rs. 36,000/- in the year 2005. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 36,000/- per annum.

15. By deducting the usual 1/3rd of Rs. 36,000/- towards the personal expenses of the deceased, the claimants" dependency is assessed at Rs. 24.000/-per annum.

16. Considering that deceased Jethuram Yadav was 45 years of age on the date of the accident, the appropriate multiplier would be 14 in view of the recent dictum of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein multiplier of 14 was prescribed for the age group between 41-45 years.

17. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of 14, the compensation works out to Rs. 3,36,000/-. The claimants are further entitled to receive Rs. 5000/- towards funeral expenses; Rs. 5,000/- for loss of

consortium to the widow and Rs. 5,000/- for loss of estate. The claimants, thus, become entitled to receive a total sum of Rs. 3,51,000/- as compensation for the death of deceased Jethuram Yadav in the motor accident.

18. Learned Counsel for the parties submitted that with a view to avoid any possible dispute between the parties 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.

19. Considering all the relevant factors 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. 76,000/- at Rs. 8,000/-.

20. For the foregoing reasons, the appeal filed by the Appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 2,75,000/- awarded by the Tribunal is enhanced to Rs. 3,51,000/- with further quantified amount of interest of Rs. 8,000/- on the enhanced amount of compensation of Rs. 76,000/-.

21. Respondent No. 3 The National Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 84,000/- (Rs. 76,000/- towards enhanced amount of compensation + Rs. 8,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs. 76,000/-) before the concerning Claims Tribunal.

22. No order as to costs.