(2011) 08 CHH CK 0025

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 581 of 2008

Smt. Malawati Nayak Bai and Other — APPELLANT

Vs

Ramji Sahu and other — RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2011) 1 CGBCLJ 431

Hon'ble Judges : Rajeev Gupta, C.J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Sanjay Agrawal, for the Appellant; H.B. Agrawal and Smt. Meera Jaiswal, for the Respondent

Judgement

Mr. Rajeev Gupta, C.J.—This is claimants'' appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Mahasamund (for short ''the tribunal'') vide award dated 05.11.2007, passed in Claim Case No. 64/2007. As against the compensation of Rs. 15,00,000/- claimed by the appellants/claimants, unfortunate widow, minor son and mother of deceased Tejram Nayak, by filing a claim petition u/s 163A of the Motor Vehicles Act, for his death in the motor accident on 21.02.2007, the Tribunal awarded a total sum of Rs. 1,48,000/- as compensation along with interest @ 6% 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 Tejram Nayak died on account of the injuries sustained by him in the motor accident on 21.02.2007; the accident occurred due to rash and negligent driving of the motorcyclist of the offending motorcycle bearing registration No. C.G.-04-CJ/5894; though the above offending motorcycle on the date of the accident was insured with United India Insurance Company Limited, no extra-premium was paid by the owner of the motorcycle for covering the risk of the pillion-rider, the Insurance Company was not liable to pay compensation to the claimants and the liability in that behalf was that of the owner of the motorcycle.

3. The Tribunal assessed the income of the deceased at Rs. 1,500/- per month and Rs. 18,000/- per annum. By deducting 1/3rd of Rs. 18,000/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 12,000/- per annum. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of 12, the compensation was worked out to Rs. 1,44,000/-. By awarding further sum of Rs. 4,000/- under other heads, the Tribunal awarded a total sum of Rs. 1,48,000/- as compensation to the claimants for the death of deceased Tejram Nayak in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,48,000/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

4. Shri Sanjay Agrawal, learned counsel for the appellants submitted that the Tribunal has erred in exonerating the insurer of the motorcycle from its liability to pay compensation to the claimants; in not accepting the claimants'' evidence about the income of the deceased and in assessing his income at Rs. 1,500/- per month and Rs. 18,000/- per annum only; in selecting the lower multiplier of 12; and in awarding low compensation of Rs. 1,48,000/- only.

5. Shri H. B. Agrawal, learned Senior Counsel with Smt. Meera Jaiswal, Learned counsel for respondent No. 2, the United India Insurance Company Limited, the insurer of the offending motorcycle though could not dispute that in view of the circular of the IRDA, the risk of the pillion-rider traveling on a motorcycle insured under a package/comprehensive insurance policy, is covered however submitted that the compensation of Rs. 1,48,000/- assessed by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

6. So far as the finding recorded by the Tribunal leading to the exoneration of the insurer of the offending motorcycle is concerned, it is apparent from the Insurance Policy that the offending motorcycle was insured under a package/ comprehensive policy. It is not in dispute that under the circular issued by the IRDA in the year 2009, the risk of a pillion-rider on a motorcycle insured under a package/comprehensive policy is covered and the Insurance Company is liable to pay compensation to the claimant/claimants. Thus, the finding recorded by the Tribunal leading to the exoneration of the insurer of the motorcycle only on the ground that no extra-premium was paid by the owner of the motorcycle for covering the risk of the pillion-rider is liable to be set aside and is hereby set aside. We hold that the insurer of the motorcycle is liable to pay compensation to the claimants.

7. Now we shall examine as to whether the compensation of Rs. 1,48,000/- assessed/awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

8. The claimants pleaded that deceased Tejram Nayak used to earn Rs. 2,00,000/- per annum from agriculture, no cogent and reliable evidence was led before the Tribunal to establish that the deceased even owned any piece of

agricultural land at all. In this state of evidence, we do not find any fault in the approach 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. 1,500/- per month and Rs. 18,000/- per annum in the year 2007 is certainly on the lower side and requires reconsideration.

10. Considering that deceased Tejram Nayak was aged about 32 years on the date of the accident, we are of the opinion that he could have easily earned Rs. 70-75/- per day even by working as an unskilled labour in the year 2007. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 2,000/- per month and Rs. 24,000/- per annum.

11. By deducting the usual 1/3 of Rs. 24,000/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs. 16,000/- per annum.

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

13. Considering that deceased Tejram Nayak was 32 years of age, we are of the opinion that multiplier of 16 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 16 has been prescribed for the age group between 31-35 years.

14. By multiplying the annual dependency of Rs. 16,000/- with the multiplier of 16 the compensation works out to Rs. 2,56,000/- The claimants are further entitled to receive Rs. 5,000/- towards funeral expenses; Rs. 5,000/- for loss of estate and Rs. 5,000/- for loss of consortium to the widow. The claimants, thus, become entitled to receive a total sum of Rs. 2,71,000/- as compensation for the death of deceased Tejram Nayak in the motor accident.

15. For the foregoing reasons, the appeal filed by the appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,48,000/- awarded by the Tribunal is enhanced to Rs. 2,71,000/-. The above amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

16. By setting aside the finding recorded by the Tribunal leading to the exoneration of the insurer of the motorcycle, the insurer now is held liable to pay compensation to the claimants.

17. Respondent No. 2 the United India Insurance Company Limited is granted three months'' time for depositing the compensation of Rs. 2,71,000/- along with interest due thereon @ 6% per annum form the date of filing of the claim petition till the date of actual payment. The amount, if any paid by the Insurance Company u/s 140 of the Motor Vehicles Act before the Tribunal shall be given due adjustment. No order as to costs.