

(2008) 02 CHH CK 0029
In the Chhattisgarh High Court
Case No : M.A. No. 388 of 1998

Smt. Najmun Bai and Others	Vs	APPELLANT
Sanjay Dewangan and Others		RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) 3 MPJR 29

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : S.C. Verma, for the Appellant; V.R. Tiwari, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

This is claimants' appeal filed u/s 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Seventh Motor Accidents Claims Tribunal, Raipur in Claim case No. 115 95.

The claimants who were widow, minor children and mother of the deceased Mainuddin claimed compensation of Rs. 7,50,000/- by filing a claim petition u/s 166 of the Motor Vehicles Act for his death in the motor accident on 19.03.1995 when the jeep bearing registration No. MP 23 - D 2641 in which he was travelling met with an accident with an unknown truck due to rash and negligent driving of the jeep driver resulting in instantaneous death of Mainuddin at the spot. The claimants further pleaded that deceased Mainuddin used to earn Rs. 80/- per day.

The owner, driver and insurer of the jeep contested the claim and denied their liability to pay compensation to the claimants. The owner and driver of the jeep took the plea that the accident occurred due to the negligence of the truck driver. The Insurance Company also pleaded that the accident occurred due to rash and negligent driving of the truck driver. It further pleaded that the jeep was being plied in breach of the policy (sic).

The claimants examined PW 1 Najmunbai and PW/2 Mohd Akram (sic) as, the owner, drier and insurer of the jeep did not examine any witness in rebuttal.

The Tribunal on a close scrutiny of the evidence led by the parties held that deceased Mainuddin died on account of injuries sustained by him in the motor accident on 19.03.1995; the accident occurred due to the rash negligent driving of the driver of the jeep; and as the jeep was insured with Respondent - Insurance Company i.e. Oriental Insurance Company Limited, it was liable to pay compensation to the claimants.

As the (sic) led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed the income of the deceased at Rs. 1,250/- per month and the claimants' dependency was assessed at Rs. 1,000/- per month and Rs. 12,000/- per annum.

Considering that the deceased was aged about 35-40 years on the date of accident, the Tribunal selected the multiplier of 15. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of 15 the compensation was worked out to Rs. 1,80,000/- by awarding further sum of Rs. 7,500/- under other permissible heads the Tribunal awarded a total sum of Rs. 1,87,500/- as compensation to the claimants for the death of Mainuddin. The Tribunal further awarded interest @ 12% per annum from the date of application till the date of actual payment.

Shri S.C. Verma, learned Counsel for the Appellants vehemently argued that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased; in assessing the income of the deceased at Rs. 1,250/- per month; and in awarding low compensation of Rs. 1,87,500/- only.

Shri V.R. Tiwari, learned Counsel for Respondent No. 3 - Oriental Insurance Company Limited, on the other hand supported the award and contended that the compensation of Rs. 1,87,500/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

The findings recorded by the Tribunal that deceased Mainuddin died on account of injuries sustained by him in the motor accident on 19.03.1995; the accident occurred due to rash and negligent driving of the driver of the jeep; and that the Insurance Company was liable to pay compensation to the claimants, have now attained finality as the Respondents have not filed any appeal against the award. That apart, there is overwhelming evidence on record to establish the above facts. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

True, the claimants pleaded that deceased Mainuddin used to earn Rs. 80/- per day, but, the evidence led in support of the said plea was not of clinching nature. In this state of evidence, we do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs. 1,250/- per month.

The Tribunal has been quite liberal in deducting only Rs. 250/- per month towards personal expenses of the deceased and in assessing the claimants'

dependency at Rs. 1,000/- per month and Rs. 12,000/- per annum.

The multiplier of 15 selected by the Tribunal considering that the deceased was aged about 35-40 years and claimant No. 1 - Smt Najmunbai was shown to be 30 years of age, in our opinion, is appropriate and does not call for any interference.

We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of assessment of the income of the deceased or claimants' dependency or the multiplier selected.

In this view of the matter, the appeal filed by the claimants u/s 173 of the Motor Vehicle Act for enhancement of the compensation is liable to be dismissed and is hereby dismissed.

No order as to costs.