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(2011) 04 CHH CK 0020

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 285 of 2004

Smt. Rajrani Athwal and Others — APPELLANT

Vs

Anil Khan and Others — RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 3 TAC 559

Hon'ble Judges : Rajeev Gupta, C.J;Rajeshwar Lal Jhanwar, J

Bench : Full Bench

Advocate : Sanjay Kr. Agrawal and Mr. Sudeep Agrawal, for the Appellant; Shree Kumar Agrawal with Shri Anand Gupta, for the Respondent

Judgement

Rajeev Gupta, C.J.—This is claimants'' appeal for enhancement of the compensation awarded by the 5th Additional Motor Accident Claims Tribunal, Durg (for short ''the Tribunal'') vide award dated 29th November, 2003, passed in Claim Case No. 108/2000. As against the compensation of Rs. 19,70,000/- claimed by the appellants/claimants, unfortunate widow and children of deceased Bhupendra Singh Athwal, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 11th October, 2000, the Tribunal awarded a total sum of Rs. 6,82,500/- as compensation alongwith interest @ 8% 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 Bhupendra Singh Athwal died on account of the injuries sustained by him in the motor accident on 11th October, 2000; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Truck bearing registration No. W.B. 03-8935; as the above offending vehicle Truck on the date of the accident was insured with the New 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. 7,500/- per month and Rs. 90,000/- per annum. By deducting 1/3rd of Rs. 90,000/-towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 60,000/- per annum. By multiplying the annual dependency of Rs. 60,000/- with the multiplier of 11, the compensation was worked out to Rs. 6,60,000/-. By awarding further sum of Rs. 22,500/-under other heads, the Tribunal awarded a total sum of Rs. 6,82,500/- as compensation to the claimants for the death of deceased Bhupendra Singh Athwal in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 6,82,500/- @ 8% per annum from the date of filing of the claim petition till the date of actual payment.

5. Shri Sanjay K. Agrawal and Shri Sudeep Agrawal, learned Counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 7,500/- per month on the basis of his net salary; in selecting the lower multiplier of 11; and in awarding low compensation of Rs. 6,82,500/- only.

6. Shri Shree Kumar Agrawal, learned Senior Counsel with Shri Anand Gupta, learned Counsel for respondent No. 3, the New India Insurance Company Limited, the insurer of the offending vehicle Truck, on the other hand, supported the award and contended that the compensation of Rs. 6,82,500/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

7. Shri Raj Awasthi, learned Counsel for respondent No. 5, National Insurance Company Limited, the insurer of the Scooter, which the deceased himself was driving at the time of the accident, also supported the award.

8. Deceased Bhupendra Singh Athwal on the date of the accident was aged about 47-48 years. He was working as Junior Executive in Bhilai Steel Plant. His salary slip for the month of August, 2000, (Ext. P/23) reveals that his basic-pay was Rs. 6,325/- and he was getting dearness allowance of Rs. 4,693/- per month. The above salary slip further reveals that Rs. 579/- and Rs. 120/- were being deducted from the salary of the deceased towards income tax and professional-tax. The total of basic-pay and dearness allowance of the deceased comes to Rs. 11,018/- (Rs. 6,325/- + Rs. 4,693/-). By deducting the sum of Rs. 579/- and Rs. 120/- towards income tax and professional-tax, the salary of the deceased relevant for the purposes of assessment of the compensation comes to Rs. 10,319/- per month, which for the sake of convenience is rounded off to Rs. 10,000/-per month and Rs. 1,20,000/- per annum. The Tribunal apparently has fallen into error in assessing the income of the deceased on the basis of his net pay only. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 10,000/- per month and Rs. 1,20,000/- per annum.

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9. By deducting the usual 1/3rd of Rs. 1,20,000/- towards the personal expenses of the deceased, the claimants'' dependency is assessed at Rs. 80,000/- per annum.

10. Considering the age of the deceased and his widow, we are of the opinion that multiplier of 12 would be appropriate in the present case.

11. By multiplying the annual dependency of Rs. 80,000/- with the multiplier of 12 the compensation works out to Rs. 9,60,000/-. 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. 9,75,000/- as compensation for the death of deceased Bhupendra Singh Athwal in the motor accident.

12. For the foregoing reasons, the appeal filed by the appellants/ claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 6,82,500/- awarded by the Tribunal is enhanced to Rs. 9,75,000/-. The enhanced amount of compensation of Rs. 2,92,500/- shall carry interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

13. Respondent No. 3 the New India Insurance Company Limited is granted three months'' time for depositing the total sum of Rs. 2,92,500/-alongwith interest due thereon @ 6% per annum from the date of filing of the claim petition till the date of actual payment, before the concerning Claims Tribunal. No order as to costs.

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