(2009) 08 CHH CK 0045

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 218 of 2003

Smt. Sarita Devangan and Others — APPELLANT

Vs

Anand Kumar Singh and Others — RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) 3 CGLJ 376 : (2009) 3 MPJR 128

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

Bench : Full Bench

Advocate : Indira Tripathi, for the Appellant; Qamrul Aziz, for Respondent No. 3, Suryakant Mishra, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Appellants/claimants have filed this appeal for enhancement of amount of compensation awarded by the Third Additional Motor Accident Claims Tribunal (F.T.C.), Korba, District Korba (C.G.) in Claim Case No. 21/2002 on 18th of January, 2003.

2. The facts, briefly stated, are as under:

Appellants/claimants are the widow, minor daughter, parents, brothers and sisters of deceased Govind Prasad Devangan, who died in the motor accident on 14.8.2001, when his scooter, bearing registration No. MP 26 KA/3683 was dashed by the offending truck bearing registration No. MP 57 H 0084. The Appellants filed a Claim Petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 1,01,61,200/- inter alia pleading that the accident occurred on account of rash and negligent driving of the offending truck by its driver. The Appellants pleaded that the deceased was running a General-Store in the name and style of Gopal General Store and he was earning Rs. 5,000/- per month.

The owner denied the claim of the Appellants pleading that no accident took place from his vehicle; a false case has been registered against the driver of his vehicle; and a very high amount has been claimed by the Appellants.

The insurer of the truck i.e. Respondent No. 3, The New India Assurance Company Ltd., also denied the claim of the Appellants and pleading that the truck was being plied in breach of policy conditions, therefore, the Insurance Company was not liable to pay compensation. Respondent No. 4, insurer of the scooter, Oriental Insurance Company Ltd., formally denied the claim of the Appellants and pleaded that the accident occurred on account of rash and negligent driving of the offending truck by its driver, therefore, no liability can be fixed on them. Alternatively, they also pleaded that the deceased himself was responsible for the accident, therefore, on this account also they are not liable to pay compensation.

The Appellants examined Sunil Kumar Agrawal (AW-1) and Smt. Sarita Devangan (AW-2) in support of their Claim Petition, whereas, Respondent No. 3 examined one Tusaar Kanti Ghosh (NAW-1) in rebuttal.

Learned Claims Tribunal recorded findings that the accident occurred on account of rash and negligent driving of the offending truck by its driver and the Appellants were entitled to receive compensation. In Para-18 of the award, the Tribunal held that since the truck was insured with Respondent No. 3, therefore, Respondent No. 3 would be responsible to pay compensation. However, in Para-19 of the award, the Tribunal finally said that Respondents 2, 3, and 4 shall be jointly and severally liable to pay compensation to the Appellants.

So far as quantum is concerned, the Tribunal, relying on the testimony of the wife of the deceased (AW-2) assessed that an income of Rs. 5,000/-was being earned from the said General-Store. However, it further held that the said General-Store was being run jointly by Appellant No. 3 Madan Lai Devangan, Appellant No. 5 Gopal Prasad Devangan and the deceased. Therefore, the personal income of the deceased was assessed on the basis of his 1/3rd contribution in the shop as Rs. 1,666/- per month and Rs. 19,992/-per annum. After deducting 1/3rd towards the personal expenses of the deceased, the annual dependency of the Appellants was worked out to Rs. 13,328/-. By applying multiplier of 17 to the said annual dependency of Rs. 13,328/-, the compensation was worked out to Rs. 2,26,576/-. By adding a further sum of Rs. 30,000/- under other heads, the total amount of compensation was worked out to Rs. 2,56,576/-. The Tribunal also awarded interest at the rate of 9% per annum from the date of filing of the Claim Petition till its realization.

As stated above, the Appellants are claiming enhancement of amount of compensation, whereas, Respondent No. 4 i.e. Oriental Insurance Company Ltd. has filed a cross objection (M.{C.}P. No. 895/2004) challenging that part of the award, which directs that Respondent 4 shall be jointly and severally liable to pay the amount of compensation to the Appellants/claimants.

3. Smt. Indira Tripathi, learned Counsel appearing on behalf of the Appellants, argued that the Tribunal erred in law in assessing a low income of the deceased.

She also argued that the income of the deceased from the shop has been wrongly reduced on the basis of contribution of other family members also.

4. On the other hand, Mr. Qamrul Aziz, learned Counsel appearing on behalf of Respondent No. 3, opposed these arguments and supported the award passed by the Claims Tribunal.

5. Mr. Suryakant Mishra, learned Counsel appearing on behalf of Respondent No. 4, argued that the Tribunal recorded a positive finding vide Para-18 of the award that the insurer of the truck was liable to pay compensation, whereas, in Para-19 of the award, it has mentioned that Respondents 2, 3 and 4 shall be jointly and severally liable to pay compensation to the Appellants, therefore, the cross objections filed by Respondent No. 4/Oriental Insurance Company Ltd. be allowed and Respondent No. 4 be exonerated from the liability so fixed by the Tribunal in Para-19 of the award.

6. We have heard the learned Counsel for the parties at length and have also perused the records of the claim case.

7. The Appellants/claimants contended that the deceased was earning Rs. 5,000/- per month from the said shop but the evidence led on that behalf was not of clinching nature. The Tribunal has observed vide Para-15 of the award that the shop was on the name of Appellant No. 5 Gopal Prasad Devangan and in fact, it was opened by Appellant No. 3 Madan Lal Devangan on the name of his son Gopal Prasad Devangan. The Tribunal categorically observed that the claimants could not adduce any documentary evidence to show that the shop was on the name of the deceased or it was an exclusive concerned of the deceased and on this account, holding the income of the shop as Rs. 5,000/- per month, it assessed the income of the deceased at Rs. 1,666/- per month on the basis of his contribution to the extent of 1/3rd in the shop. We note that all this has been done on the basis of oral evidence of the wife of the deceased in which nothing has been deposed with certainty and vague and bald statements have been made. Except the oral testimony of the wife of the deceased (AW-2), no other evidence has been adduced in that behalf. In such situation, in the considered view of this Court, the Tribunal ought to have gone for a calculation on the basis of notional income prescribed under the second schedule prepared u/s 163A of the Motor Vehicles Act. The notional income of Rs. 15,000/- was prescribed in the year 1994. If the rise in prices of essential commodities and the cost of living are taken into account, the notional income of Rs. 15,000/- prescribed in the year 1994 would certainly come to Rs. 30,000/- in the year 2001, which we have held in many cases for determining the amount of compensation. Therefore, we propose to re-compute the compensation by holding the annual income of the deceased at Rs. 30,000/-.

8. By deducting 1/3rd towards the personal expenses of the deceased from the above income of Rs. 30,000/-, the dependency works out to Rs. 20,000/- per annum. Admittedly, the deceased was aged about 22 years on the date of

accident and his widow has been shown to be aged about 21 years and there is a minor daughter who has been shown to be aged about 8 months. Therefore, keeping in mind the principles laid down in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , we deem it appropriate to apply multiplier of 18 in this case. By applying the multiplier of 18 to the annual dependency of Rs. 20,000/-, the compensation works out to Rs. 3,60,000/-. By adding a further sum of Rs. 15,000/- under the other permissible heads, the total amount works out to Rs. 3,75,000/- which the Appellants are entitled to receive as compensation for the death of deceased Govind Prasad Devangan in the motor accident. The Tribunal has already awarded a sum of Rs. 2,56,576/-. By deducting this amount from Rs. 3,75,000/-, the balance comes Rs. 1,18,424/-, therefore, the Appellants/claimants are entitled to receive a sum of Rs. 1,18,424/- as the enhanced amount of compensation on account of death of the deceased in the motor accident.

9. To avoid further complications and looking to the delay caused in disposal of the Claim Petition as also the claimants'' appeal and that the Insurance Company alone cannot be blamed for such delay, we deem it appropriate to quantify the interest, which we quantify as Rs. 21,576/- in this matter.

10. Therefore, the Appellants/claimants are entitled to receive a sum of Rs. 1,40,000/- more (Rs. 1,18,424/- as the enhanced amount of compensation and Rs. 21,576/- as the amount of quantified interest on the enhanced amount of compensation).

11. So far as liability to pay compensation is concerned, it would certainly be on the insurer of the truck i.e. The New India Assurance Company Ltd./Respondent No. 3 as we have not disturbed the finding of the Tribunal that the accident occurred on account of rash and negligent driving of the offending truck by its driver and the same has also not been challenged by either of the parties and has attained finality. Even the Tribunal, after recording the said finding, has held in Para-18 of the award that Respondent No. 3 would be liable to pay compensation but inadvertently, without assigning any reason, it mentioned in Para-19 of the award that Respondents 2, 3 and 4 shall be jointly and severally liable to pay compensation to the Appellants. The Tribunal fell in error while directing that Respondent No. 4 shall also be jointly liable to pay compensation. Therefore, the cross objection filed by Respondent No. 4 deserves to be allowed. Accordingly, we allow the cross objection and exonerate Respondent No. 4/ Oriental Insurance Company Ltd.

12. Accordingly, the appeal, filed by the Appellants/claimants for enhancement of amount of compensation, is allowed in part. The Appellants/claimants are entitled to receive Rs. 1,40,000/- more as the enhanced amount of compensation and quantified interest in this matter which they shall receive from Respondent No. 3 i.e. The New India Assurance Company Ltd. Respondent No. 3/ The New India Assurance Company Ltd. is granted 3 months time to deposit the said amount before the concerned Claims Tribunal. We also direct that out of the

said amount of Rs. 1,40,000/- to be deposited by Respondent No. 3/The New India Assurance Company Ltd., Rs. 40,000/- shall be paid to the widow of the deceased namely Smt. Sarita Devangan (Appellant No. 1) and the remaining amount of Rs. 1,00,000/- shall be deposited in fixed deposit in a Nationalized Bank on the name of the minor daughter of the deceased i.e. Appellant No. 2, Ku. Anjali for a period of 10 years.

13. The cross objection filed by Respondent No. 4 is also allowed and Respondent No. 4/Oriental Insurance Company Ltd. is exonerated in this matter. The mandatory deposit of Rs. 25,000/- which was deposited for filing the cross objection shall be refunded to Respondent No. 4.

14. There shall be no orders as to costs.

