(2025) 02 JH CK 1257

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 127 Of 2010

Smt. Sunita Kumari & Sunita Devi — APPELLANT

Vs

Sandeep Kumar Bhagat — RESPONDENT

Date of Decision : 21-02-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2025) 02 JH CK 1257

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Sanjay Prasad, Alok Lal

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

On perusal of the earlier order dated 09.01.2024, it appears that I.A. No. 6258 of 2023 has been disposed of by a coordinate bench of this Court.

It is pointed out by the learned counsel appearing on behalf of the appellant that vide order dated 09.01.2024 passed in this case, there was typographical error with respect to the year as instead of I.A. 6258 of 2023 it has been typed as I.A. No. 6258 of 2022.

Considering the submissions, the order dated 09.01.2024 passed in this case is accordingly modified and I.A. No. 6258 of 2022 will be read as I.A. No. 6258 of 2023.

M. A. No. 127 of 2010

1. Appellants/ Claimants are in appeal for enhancement of compensation awarded under Section 166 of M.V. Act vide the impugned judgment of Award dated 05.04.2010 passed by learned ADJ, FTC.III, MACT, Dhanbad in Title (MV) Suit No.246 of 2006.

2. It is argued by the learned counsel on behalf of the appellants that the deceased was a temporary employee of postal department and was drawing a salary of Rs. 3186/- per month, and part time he was also soliciting the business on behalf of L.I.C. as L.I.C. agent from which he had an annual income of Rs. 17000/- to 18000/-.

3. It is argued that learned Tribunal has considered only @ Rs. 15000/- per annum as the notional income, but not taken into account Rs. 3186/- per month as salary, regarding which he had filed pay slip/ salary certificate which has been adduced into evidence and marked as Ext. 1.

4. It is also submitted that the compensation under the head of loss of earing on account of future prospect and conventional head have not been allowed in the light of ratio laid down by the Apex Court in the case of National Insurance Company Ltd. vs. Pranay Sethi, reported in (2017) 16 SCC 680.

5. Learned counsel on behalf of the Insurance Company has defended the impugned judgment of award and submitted that so far, the salary part is concerned, claimants cannot plead that he was i.e. employee of the both postal department and at the same time, he was also earning by way of part time work as a L.I.C. agent.

6. I find force in the argument advanced on behalf of the Insurance Company that the commission earned as a L.I.C. agent cannot be said to be consistent and permanent source of income, as the same will depend upon the business solicited every year.

7. The facts of the case are not in much dispute, as the only short point of consideration is whether the compensation has to be awarded by taking Rs. 3186/- per month and also of the commission of Rs. 17,000/- from LIC business of the deceased.

8. This Court is of the view that considering the nature of employment, the appellants/ claimants cannot seek income from both the sources.

9. Under the circumstance, income of Rs. 3186/- per month is accepted and a final compensation amount as per the ratio laid down by Apex Court in the case of Pranay Sethi (supra) taking the age of the deceased 35 years and one-fifth as the living expense of the deceased, multiplier as 17 and 40% as the future prospects will work out as under:-

Annual income of the deceased taking Rs.3186/- as monthly income + 40% as Future prospect

Rs.3,186/- X 12 = Rs.38,232/- + Rs. 38,232/- X 40% as Future prospect

Rs. 38,232/- Rs.15,292.80/-= Rs.53,524.80/-

Annual Dependency after deducting 1/5th

Rs.53,524.80/-

Rs.10,704.96/-

= Rs.42819.84/-

Multiplier taking 35 years as the age of the deceased at the time of the accident

16

Rs. 42819.84/- X 16=Rs.6,85,117.44

Loss of Estate, Funeral Expenses and Loss of Consortium

Rs.84,000/-

Rs.84,000/

Total

Rs.7,69,117.44/-

10. The Respondent- Insurance Company is liable to pay compensation of Rs.7,69,117.44/ along with interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Amount earlier paid to the claimants shall be deducted from the final amount. The payment shall be deposited within six weeks from the date of this order by the Insurance Company before the learned Tribunal and thereafter the Tribunal will disburse the same as per the terms fixed to the claimants within two weeks.

Misc. Appeal is accordingly, allowed.

I.A(s), if any, stands disposed of.

