(2019) 01 CHH CK 0166

In the Chhattisgarh High Court

Case No : MIscellaneous Appeal Of Compensatic No. 1171 Of 2013

Smt.Asha Soni & Others — APPELLANT

Vs

Ramkewal Sahu @ Chhotu & Others — RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:
Indian Penal Code, 1860 — Section 279, 302, 304A

Citation : (2019) 01 CHH CK 0166

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Pushpendra Kumar Patel, Qamrul Aziz

Final Decision : Partly Allowed

Judgement

1. Appellants have challenged the impugned award dated 26.09.2013 passed by Additional Motor Accident Claims Tribunal, Korba (for short, 'Claims Tribunal') in Claim Case No.122 of 2013 whereby learned Claims Tribunal partly allowed the application and awarded a total sum of Rs.14,08,000/- in a death case.

2. Brief facts for disposal of this appeal are that on 25.04.2012 when SN Soni, an employee working at Balco (Bharat Aluminium Company Limited) was coming home on his motorcycle and went towards Engineering Building for marking his attendance after completion of his office hours. At that relevant time, one truck bearing No.CG-12 S-0958 (for short, 'offending vehicle') driven by respondent- 1 rashly and negligently, dashed the motorcycle due to which SN Soni sustained severe injuries on his person. Immediately after the accident he was taken to Balco hospital from where he was referred to the Appollo Hospital, Bilaspur. During the course of treatment, he succumbed to the injuries sustained by him in the accident. On account of his death his legal heirs have filed claim application before competent Claims Tribunal claiming Rs.91,70,000/- in total on all heads towards compensation on the grounds that on the date of accident deceased was employed with Balco on the post of Assistant Manager and drawing monthly salary of Rs.46,500/-, and they suffered loss of dependency as they were totally

dependent on the deceased- SN Soni.

3. Respondents- 1 and 2, who are driver and owner of the offending vehicle respectively submitted reply to the claim application. They denied pleading of rash and negligent driving of respondent- 1, driver and further stated in their evidence that accident took place due to negligent driving of the deceased himself. It was further pleaded that as on the date of accident offending vehicle was insured with respondent- 3, New India Insurance Company Limited and therefore, liability if any, for payment of compensation would be on the Insurance Company.

4. Respondent-3 submitted reply to the claim application and denied all the pleadings against them. It was further pleaded that on the date of accident, driver of the offending vehicle was not possessing valid and effective driving license to drive the vehicle and therefore, there is violation of conditions of Insurance Policy and on account of that, Insurance Company pleaded for their exoneration from payment of compensation, if awarded.

5. Learned Claims Tribunal on appreciation of pleadings and evidence available on record, held that there was contributory negligence on the part of deceased as well as driver of the offending vehicle to the extent of 50% each. It further arrived at a finding that on the date of accident driver was possessing valid and effective driving license to drive the vehicle and there was no violation of conditions of Insurance Policy. The Tribunal took monthly net salary of the deceased and awarded a total sum of Rs.14,08,000/- as compensation to the claimants, after deducting 50% towards contributory negligence of the deceased himself.

6. Learned counsel for the appellants argued that learned Claims Tribunal committed an error in holding contributory negligence of deceased himself in the accident without considering specific evidence of Manoj Kumar (AW-2) who was examined as eyewitness and was also independent witness to the accident. Learned counsel further argued that Claims Tribunal further erred in holding income of the deceased as Rs.29,495/- per month because that figure as mentioned in the pay-slip (ExP/8) is net salary of the deceased after gross deductions on different heads. His gross salary as shown in the pay-slip is Rs.46,327/-. It is further argued that learned Claims Tribunal even awarded meagre amount towards other conventional heads therefore, the award of compensation may suitably enhanced.

7. Per contra, learned counsel for respondent- 3/Insurance Company supported the award and stated that the driver of offending vehicle has been examined and from his evidence it is proved that the deceased himself was also negligent on his part for the accident. He further argued that as per the evidence of Rajkumar Sharma (NAW- 1) income of the deceased towards honorarium and hostel subsidy are not regular income of an employee, therefore, after deducting such amounts from salary of the deceased, learned Claims Tribunal rightly assessed

monthly income at Rs.29,595/-, which does not call for any interference by this Court.

8. I have heard learned counsel for the parties and perused the record. So far as finding recorded by learned Claims Tribunal towards contributory negligence of deceased himself is concerned, it is well established in the evidence of Manoj Kumar Talwar (AW-2), who was working as contract labour at Balco and was coming on his motorcycle on the same road. He categorically stated that at the time of accident deceased was riding his Bajaj motorcycle and the offending vehicle was also moving in the same way in same direction after the motorcycle and the witness was behind the truck. He stated clearly in his evidence that the offending vehicle rashly and negligently dashed Bajaj motorcycle of the deceased on its back.

9. On the other hand, driver of the offending vehicle was examined as NAW-2 before Claims Tribunal. He stated that when he was turning his vehicle, deceased tried to overtake it and came under the truck. Apart from this, there is no other evidence brought on record by respondents- 1 and 2 to show as to the manner in which accident took place.

10. On considering the evidence of AW-1, AW-2 and NAW-2, AW- 1 and 2 are considered to be interested witnesses. NAW-2 himself was driving the offending vehicle and it is apparent on record that offence punishable under Section 304A of the IPC was registered against him and charge-sheet has also been filed. Looking to the oral evidence of AW-2 and NAW-2 and also considering the other records available with respect to Criminal Case, in the opinion of this Court it will be safe to rely upon the evidence of AW-2, who is an independent witness to the accident and there is no reason to disbelieve this witness as regards to the manner in which the accident took place. On the basis of evidence of AW-2 it amply makes clear that motorcycle of the deceased was hit from its back due to which he came under the offending vehicle, sustained severe injuries.

11. Hon'ble Supreme Court while considering the issue of contributory negligence in the matter of Jiju Kuruvila and others Vs Kunjujamma Mohan and others reported in (2013) 9 SCC 166, held as under:

"20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

12. In another judgment rendered by Hon'ble Supreme Court in the matter of Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013 reported in AIR SCW 5375, while setting aside the finding of contributory negligence, held as under:

"12. ------The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law."

13. As discussed above, it is settled law that to prove contributory negligence of anybody, there should be specific and clinching piece of admissible evidence before learned Claims Tribunal. Here in the present case, except oral evidence of NAW-2, driver of offending vehicle, there is no other material or corroborative evidence available on record to prove the contributory negligence of the deceased. On the contrary claimants examined Manoj Kumar Talwar (AW-2), who was by chance available on the spot being contract labour and can be considered as independent witness. In view of evidence of AW-2, it cannot be said that there is contributory negligence on the part of deceased himself in the said accident. Therefore, I deem it fit to set aside the award passed by learned Claims Tribunal with respect to 50% contributory negligence on the part of deceased himself in the accident.

14. Next point for consideration before this Court is whether learned Claims Tribunal has rightly assessed monthly income of the deceased. From perusal of salary slip (Ex.P/8) of the deceased, his gross-pay on the date of accident was Rs.46,327/-. Rajkumar Sharma (NAW-1), also an employee of Balco in his evidence categorically stated that amount towards hostel subsidy to be granted once in a year and further that amount towards honorarium in the salary is to be

given on the basis of performance and it is not paid for each and every month.

15. In view of the above evidence, Rs.7,507/- towards honorarium and Rs.3,600/- towards hostel subsidy shown in the pay slip of the deceased required to be deducted from gross salary of the deceased. Now gross salary comes to Rs.35,220/- from which, income tax of Rs.1,247/- and petrol charges of Rs.1,017/- also required to be deducted as petrol allowance is being given to an employee to reach office and income tax deducts from yearly TDS. After this deduction income of the deceased comes to Rs.32,956/-. Claimants are also entitled for addition of 30% of assessed salary which comes to Rs.9,887/- (32956 x 30/100), towards future prospects.

16. Learned Claims Tribunal after calculating the amount of compensation, deducted 30% of the same towards income tax. In the opinion of this Court, it is not correct because in the salary slip itself income tax was deducted at source while making payment to the employee. Therefore, income tax should not be deducted twice, once from the monthly salary and again from the total income, from which income tax has already been deducted.

17. In view of above discussion, this Court proposes to recalculate the compensation amount awarded by learned Claims Tribunal.

18. Taking into consideration income of the deceased as assessed above and by adding 30% of the same towards future prospects, total monthly income of the deceased would be Rs.42,843/- (32,956 + 9887) and his yearly income comes to Rs.5,14,116/- (42,843 x 12). As the claimants are wife and children, deduction of 1/3rd of his salary ie Rs.1,71,372/- (5,14,116 x 1/3) towards personal expenses of the deceased would be deducted and now yearly loss of dependency of the claimants would be Rs.3,42,744/- (5,14,116 - 1,71,372). Undisputedly, on the date of accident deceased was aged about 49 years therefore, multiplier of 13 would be applicable and total loss of dependency would be Rs.44,55,672/- (3,42,744 x 13). Apart from this amount, the claimants are entitled for Rs.70,000/- on other conventional heads. Now total compensation would be Rs.45,25,672/- (44,55,672 + 70,000) instead of 14,08,000/- as awarded by learned Claims Tribunal.

19. This amount of compensation shall carry interest @ 7% per annum from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Amount of compensation, if any, already received by the appellant shall be adjusted.

20. Appeal is partly allowed with the modification in the award impugned.