
(2016) 09 TP CK 0005
In the Tripura High Court
Case No : MAC APP. No. 122 of 2013

Sri Challya Chakma

APPELLANT

Vs

Sri Birendra Kumar Nath

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 1040

Hon'ble Judges : T. Vaiphei, CJ.

Bench : Single Bench

Advocate : Mr. D.C. Saha and Mr. P.B. Chakma, Advocates, for the Appellant; Mr. M.C. Dey and Mr. K. Bhattacharjee, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

T. Vaiphei, C.J.(Oral) - Heard Mr. D.C. Saha, the learned counsel for the appellants, M.C. Dey, the learned counsel for the respondent No. 1 and 3 and Mr. K. Bhattacharjee, the learned counsel for the respondent No. 2.

2. Dissatisfied with the award of Rs. 3,49,000/- passed by the learned, Member, Motor Accident Claims Tribunal, Dharmanagar in his judgment dated 07.06.2012 of T.S. (MAC) No.64 of 2011, the appellants are filing this appeal for enhancement of the compensation so awarded.

3. The facts giving rise to this appeal are that on 20.01.2011 at about 8 AM at Phaileng-Marpara road in between Pukzing and Phulpui village, Mamit District, the deceased namely, Banga Chakma, sustained serious injuries in a road traffic accident at about 8 a.m. allegedly due to the rash and negligent driving of the vehicle by the driver of the Truck bearing No.TR-02C-1604 (407). The deceased is survived by the appellant No.1, who is his father and the appellant Nos.2, who is his mother; the deceased died a bachelor. The two appellants filed a claim petition before the Tribunal for payment of compensation to the extent of Rs. 32,50,000/-. The Tribunal after hearing the parties determined the income of the

deceased at Rs. 3,000/- and, accordingly, awarded compensation as follows:-

(i)

Pecuniary loss

-Rs. 3,24,000/-

(ii)

Funeral expenses

-Rs. 5,000/-

(iii)

Loss of consortium

-Rs. 20,000/-

Total

-Rs. 3,49,000/-

4. The learned counsel for the appellants submits that the determination of the income of the deceased by the Tribunal, on the admitted facts on record, is perverse inasmuch as the deceased was at the time of the accident was daily labourer and jhum cultivator and earned not less than Rs. 6,000/-. He also submits that the compensation awarded under the heads of loss of love and affection, loss of estate and funeral expenses are very much on the lower side, and are contrary to the decisions of the Apex Court from time to time. The learned counsel for the appellants, therefore, submits that the appellants are entitled to higher amount of compensation. In support of his contention, the learned counsel for the appellants relies on the decision of the Apex Court in Smt. Sarla Verma & Ors v. Delhi Transport Corporation & Anr., reported in AIR 2009 SC 3104 and Yerramma & Ors. v. G. Krishnamurthy & Anr., reported in AIR 2015 SC 1145.

5. Mr. K. Bhattacharjee, the learned counsel for the insurer, however, substantially support the impugned award and submits that there is not an iota of evidence to substantiate the claim of the appellants that the deceased was earning Rs. 6,000/- per month at the time of his death; not even a single documentary evidence could be produced by the appellants to show that he was earning Rs. 6,000/- per month. He, therefore, contends that the impugned judgment should be modified accordingly by making necessary deduction therein.

6. I have carefully perused the impugned award as well as the other materials on record and have given my anxious consideration to the rival submissions of the learned counsel appearing for the parties. In so far as the income of the deceased is concerned, in the evidence of the appellant No.1, he has categorically averred that the deceased was doing jhum cultivation producing

paddy, chilly, maize of minimum of 10 quintals each and used to earn Rs. 7,000/- per month; he and his wife had been solely depending on the earnings of the deceased. According to the learned counsel for the appellant, it was not difficult for a healthy labourer like the deceased to earn at least Rs. 200/- per day at the time of his death, and that the assessment of the income of the deceased at Rs. 3,000/- per month by the Tribunal is perverse and is not reflective of the ground realities. Though in the cross-examination, the income of the deceased alleged to be Rs. 80,000/- per year from all sources was denied by the insurer, the witness was not cross-examined on the aspect of the nature of his occupation. Therefore, on the admitted facts on record, it is not exorbitant to assess the income of the deceased at the time of his death at Rs. 150/- per day on average, i.e. Rs. 4,500/- per month as this amount can be earned by even unskilled labour. As observed by the Apex Court from time to time, a self-employed person living in a village could hardly produce any reliable income certificate and as such, the income of the deceased should be determined on the basis of some guess works keeping in mind the ground realities. On the basis of the occupation carried on by the deceased at the time of the accident, I am of the view that the deceased must have earned at least Rs. 5,000/- per month. As there is no dispute about the age of the deceased, which is found to be 27 years at the time of the accident, the multiplier to be adopted is 17 as pointed out by the learned counsel for the insurer. At this stage, it may be pointed out that the Apex Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121 has held that where the deceased is survived by his parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to his family. Under the circumstances, it is the appellant No. 2, who alone should be considered to be the dependant of the deceased.

7. After all considering all aspects of the matter, the loss of dependency is to be ascertained, first, by multiplying the annual income of the deceased, which will be Rs. $5000 \times 12 =$ @ Rs. 60,000/- per annum, from which one-third should be added by way of loss of future prospects, which will come to Rs. 60,000+Rs. 20,000= Rs. 80,000/-, from which shall be deducted ? for his personal expenses thereby making it Rs. 40,000/-, which, when multiplied by a multiplier of 17, will come to Rs. 6,80,000/-. Thus, the loss of dependency to the surviving members of the family of the deceased will come to Rs. 6,80,000/-, to which shall be added Rs. 50,000/- by way of loss of estate, sum of Rs. 1,00,000/- as loss of love and affection for both the appellant No. 2 to be divided in equal shares, to which shall be added another sum of Rs. 25,000/- as funeral expenses. Therefore, the total amount of compensation payable to the appellants is assessed at Rs. 8,55,000/-.

8. The appeal is, therefore, partly allowed. The enhanced amount of compensation i.e. Rs. 5,06,000/- (Rupees five lakhs and six thousand) only shall be deposited by the respondent No.2 with this Registry within a period of 3(three) months from the date of receipt of this judgment. The respondent No.2

shall also pay interest @ 9% per annum on the enhanced amount of compensation from the date of the claim petition except for the period of 470 days since that is the period of delay in presenting this appeal as contended by the learned counsel for the insurer. Any amount already paid to the claimant, or deposited by the respondent No.2 shall be adjusted accordingly. As and when the amount is deposited, the same shall be released to the appellant No. 1 without further reference from this Court. The impugned award stands modified in the manner and to the extent indicated above.

9. Transmit the L.C. records to the Tribunal forthwith.