(2012) 11 PAT CK 0086

In the Patna High Court

Case No : Miscellaneous Appeal No.877 of 2011

Sundarwa Devi APPELLANT

Vs

Krishna Singh RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Citation : (2013) 2 BBCJ 476

Hon'ble Judges : Mr. Rakesh Kumar, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Mr. Rakesh Kumar, J. (Oral)—Heard Sri Rabi Bhushan Prasad, learned counsel for the appellants and Sri Ashok Priyadarshi, learned counsel, who has appeared on behalf of Respondent no.2/ National Insurance Company Ltd. i.e. insurer of the offending vehicle.

2. The present appeal under Section 173 of the Motor Vehicle Act (hereinafter referred to as "the M.V.Act") has been preferred by the claimants/appellants against the Judgment dated 30.06.2011 and Award dated 13.07.2011 passed by Sri Jitendra Kumar Mishra, Addl. Sessions Judge, F.T.C. No.IV-cum-M.A.C. Tribunal, Nalanda at Biharsharif (hereinafter referred to as "the Claim Tribunal") in Claim Case No. 32 of 2007. By the said Judgment and Award, the learned Claim Tribunal has directed the Respondent no.2 to pay total compensation amount of Rs.2,60,000/-. Since no appeal has been preferred by the Respondent no.2, who has been directed to pay the compensation against the Judgment and Award, the Court is of the opinion that there is no need to hear the Respondent no.1/ owner of the offending vehicle and, as such, the matter was heard in absence of owner and is being disposed of by this order.

3. The appellant has primarily prayed for enhancement of compensation amount. Firstly, it was submitted by learned counsel for the appellants that the deceased at the time of accident was earning about Rs.3,500/- per month and, as such,

keeping in view the income of the deceased as Rs.3,500/-, compensation should have been calculated, but the learned Claim Tribunal has treated income of the deceased as Rs.80/- per day in view of the circular of the State Government. It has further been argued that during the trial before the learned Claim Tribunal though on behalf of the claimants, Matriculation Certificate of the deceased was got exhibited showing date of birth of the deceased as 22.05.1995 on the date of death of the deceased was aged about 44 years and as such, multiplier in this case was required to be adopted as 15, but the learned Claim Tribunal has treated the age of the deceased on the basis of post-mortem examination report as 50 and multiplier of 13 has been adopted. Learned counsel for the appellants has further prayed for adding 30% on the income of the deceased as future prospect. Since the appeal has been preferred only for enhancement of the compensation amount and no cross appeal has been filed by the insurer of the vehicle, who has been directed to pay compensation amount, there is no need to go into detail of the case.

4. However, short fact of the case is that on 23.11.1997, while the decease Anil Prasad @ Anil Kumar, husband of appellant no.1 and father of appellant no.2 was waiting for a vehicle near road-side, a truck bearing Registration No.BR-17H/7441, which was driven rashly and negligently by the driver, dashed the husband of appellant no.1 and he was crushed to death. In view of the said accident, an F.I.R. vide Deepnagar P.S. Case No.165 of 1997 was registered for the offence under Sections 279/338 of the Indian Penal Code against the driver of the offending vehicle and subsequently, charge sheet was also submitted against the driver, namely, Mahesh Singh. The claim petition was subsequently filed claiming compensation amount of Rs.3 Lacs before the learned Claim Tribunal, evidences were led and, thereafter, the learned Claim Tribunal arrived to the conclusion that death had occurred due to rash and negligent driving of the offending vehicle and the vehicle in question was under the insurance cover of Respondent no.2 i.e. National Insurance Companion Ltd. Regarding income, though, oral evidence was brought on record to show that the deceased was earning Rs.3,500/- per month from milk and agricultural business, no documentary evidence was brought on record to substantiate the claim of the income of the deceased and, as such, the learned Claim Tribunal on the basis of the wages applicable as per the Circular of the State Government i.e. Rs.80/- per day calculated the compensation amount and directed the insurer to pay compensation amount as indicated above.

5. At the time of hearing, learned counsel for the appellants has produced Ext.1 i.e. Matriculation Certificate of the deceased. Let it be kept on record. Learned counsel for the appellants submits that before the learned Claim Tribunal regarding age of the deceased documentary evidence i.e. Matriculation Certificate was brought on record, but the learned Claim Tribunal ignoring the same has preferred to rely on post-mortem examination report and considering the age of the deceased as 50 years calculated the compensation amount taking multiplier as 13, as provided under Schedule-II of the M.V.Act, whereas

Matriculation Certificate , which was got exhibited, suggests that the deceased was aged about 44 years on the date of accident. He submits that since the Matriculation Certificate was brought on record, the learned Claim Tribunal was not required to rely on the basis of post-mortem examination report to come to the conclusion regarding age of the deceased. He further submits that though no documentary evidence was brought on record to show income of the deceased, fact remains that consistently witnesses had said that the deceased was earning Rs.3,500/- per month and, as such, income as claimed by the claimants was not required to be ignored by the learned Claim Tribunal. He has also prayed for adding 30 % income as future prospect.

6. Sri Ashok Priyadarshi, learned counsel for Respondent no.2 submits that the accident had taken place in the year 1997 and once it was claimed that the deceased was earning Rs.3,500/- per month, it was mandatory on the part of the claimants to bring on record some cogent evidence; such as some register or even Bank Account, but nothing has been brought on record and, as such, the learned Claim Tribunal has rightly considered the income as Rs.80/- per day, which was available for such persons as per Government Circular. So far as multiplier and age of the deceased are concerned, Sri Pridarshi was not in a position to dispute the same. He accepts that since the Matriculation Certificate, which suggests that the age of the deceased at the time of accident was about 44 years, was got exhibited, the same should have been considered for multiplier and as per the age in view of the Matriculation Certificate, multiplier of 15 as Schedule-II of the M.V.Act would be applicable in the present case. So far as future prospect is concerned, the learned counsel for Respondent no.2/ National Insurance Company Ltd. has vehemently opposed the prayer of the appellants. He submits that once the compensation has been calculated as per specific provision described in Schedule-II of the M.V. Act, there is no point for considering the plea of grant of future prospect.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the impugned Judgment and Award. Fact remains that once the Matriculation Certificate, which is to be considered as genuine document for the purposes of the age, was already on record, the age as mentioned in the post-mortem examination report was not required to be looked into and, as such, considering the date of birth as mentioned in the Matriculation Certificate, multiplier in the case of deceased is 15 as per Schedule-II of the Act. So far income of the deceased is concerned, in view of no plausible evidence brought on record by the claimants, particularly any documentary evidence, the Court is of the opinion that the learned Claim Tribunal has rightly considered the rate of Rs.80/- per day in view of the Government Circular, which was applicable at the relevant time i.e. in the year 1997. So far as future prospect is concerned, the Court is not inclined to accept the submission of learned counsel for the appellants due to simple reason that the compensation amount in the case was calculated in terms of Schedule-II of the M.V.Act, which covers each and every aspect. Accordingly, the Judgment and Award is modified

and compensation amount is modified to the extent as follows:

8. Rs.80x 30= Rs.2400/-per month. After deducting ?rd amount it comes to Rs.1600/- per month which is to be multiplied by 15. The total amount comes to Rs. 1600x12x15= Rs. 2,86,000/-.

9. In this case Rs.10, 000/- as mental agony and other things, which has been directed to be paid, the Court considers that the same amount was reasonable, which requires no interference. Accordingly, the total compensation amount comes to (Rs.2,86,000+10,000/-)=2,96,000/- The Respondent no.2 is directed to pay the remaining amount after deducting amount already paid to the claimants within a period of two months from the date of receipt/production of a copy of this order and on remaining amount, interest @ 6 % per annum from the date of filing till the date of payment is required to be paid.

10. With above observation and modification, the appeal stands allowed.