(2018) 06 GAU CK 0024

In the Gauhati High Court

Case No : MACApp. 165 of 2014

Surja Bhanu Bewa And Anr. APPELLANT

Vs

Lalchand Ali And Anr. RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0024

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : A R Agarwala, B Bora

Final Decision : Disposed Off

Judgement

1. Heard Mr. A. R. Agarwal, leaned counsel for the Appellant and Ms. R.D. Mazumdar,learned counsel for the Respondent/Insurance Company.

2. This appeal is by the claimant against the judgment and award dated 26.09.2013passed by the MACT, Dhubri in MAC Case No. 285/2010,

whereby, the learned Tribunal granted a compensation of Rs. 5,14,200/- with interest @ 8% from the date of filing of the claim petition.

3. The undisputed facts in this appeal are that Dildar Ali, husband of the claimant died in amotor vehicle accident on 27.10.2010, involving the vehicle

bearing registration No. AS-18-C0630, owned by the respondent No. 1 and insured with the respondent No. 3. The age of the deceased was 35 years

at the time of accident and that the accident occurred due to fault of the driver of the offending vehicle.

4. Unsatisfied with the award made by the learned Tribunal, the claimant preferred theinstant appeal seeking enhancement of the award.

5. Learned counsel for the appellant submits that the deceased was a daily

labourerworking in a brick kiln and at the time of accident, he was earning

Rs. 6000/- per month and the claimant adduced evidence to that effect. However, learned Tribunal ignoring the evidence adduced by the claimant

assumed notional income as Rs. 3000/- and thereby failed to award a just and fair compensation, submits Mr. Agarwal. Further submission of the

learned counsel is that the learned Tribunal ought to have added 40% of the income as future prospect. However, in the instant case, only 30% of the

income was added as future prospect and urged for enhancement on this count.

6. Learned counsel for the Insurance Company, Ms. R.D. Mazumdar submits, that as nodocumentary evidence could be adduced by the claimant to

substantiate the income of the deceased, learned Tribunal rightly assumed notional income as Rs. 3000/- per month and as such, the claimant does not

deserves any enhancement on account of income. However, so far future prospect is concerned, Ms. Mazumdar fairly submits that as per the

guideline of the Apex Court, future prospect should be 40% of the actual income. So, the only question left out here to be decided is whether the

learned Tribunal was justified in assuming notional income of the deceased as 3000/- per month.

7. The claimant averred in the claim petition and also stated on oath by the claimant No. 1examining herself as PW-1, that the deceased was engaged

in a brick kiln at the time of accident as a daily labourer and he used to earn Rs. 6000/- per month. Apparently, no documentary evidence could be

adduced by the claimant to substantiate the oral evidence on oath that the deceased was earning Rs. 6000/- per month. However, the pleadings and

evidence of the claimant on oath, that the deceased was a daily labourer and at the relevant time he was engaged in brick kiln remained unimpeached

and uncontroverted. As the claimant could not adduced documentary evidence, learned Tribunal assumed notional income as Rs. 3000/-.

8. It is now settled position, as held by the Apex Court in long line of decisions that aperson engaged in unorganised sector or a daily labourer cannot

be expected to adduce documentary evidence to prove his income and in such case, the Tribunal should take into consideration the occupation of the

person concerned, the relevant time when the accident occurred and other ground realities for assuming a reasonable income, inasmuch as, notional

income was intended for non-earning person and not for earning person. The

Apex Court in

Sayed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd. reported in (2014) 2 SCC 735 while considering the income of a vegetable

vendor, who did not produce any document with regard to income, assuming the monthly income as Rs. 6500/-, observed, that â??It is difficult for us

to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his

monthly incomeâ?. The Apex also referring to an earlier decision in Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited

reported in (2011) 13 SCC 236 has held as under:

â??13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs. 4500/-

per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that wages of the labourer

during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though

Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no

reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs. 3000/- p.m. Secondly, the

Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the

absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have

accepted the claim of the claimant.

9. In the instant case, evidently no contrary evidence was adduced to challenge theevidence of the claimant with regard to the avocation of the

deceased, that the deceased was a daily labourer. Thus, having regard to the occupation of the deceased as a daily labourer and that the accident

occurred in the year 2010, in my considered opinion, the learned Tribunal ought not to have taken notional income, rather a reasonable income ought to

have been assumed taking into account the ground realities. Therefore, having considered the evidence of the claimant as regards the occupation of

the deceased, his age and that the accident occurred in the year 2010, this court is inclined to assume the income of the deceased as Rs. 4000/- to be reasonable at the relevant point of time. Though, learned counsel for the claimant submits that multiplier should be 17, from the evidence of the

claimant it appears that the age of the deceased was 35 years at the time of the accident and as such, learned Tribunal rightly applied multiplier 16.

10. Thus, taking the monthly income of the deceased as Rs. 4000/-, adding 40% thereto asfuture prospect as per the guideline of the Apex Court in

National Insurance Co. Vs. Pranay Sethi reported in (2017) ACJ 2700 and applying multiplier 16, deducting 1/3rd there from towards personal

expenses of the deceased, the enhanced compensation, to which, the claimant is entitled is re-assessed as under:

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Loss of dependency Rs. 4000+40%X12X16 =Â Rs. 10,75,200/-

Deduction 1/3rdÂ -Â Rs.Â Â

3,58,400/-

Funeral expensesÂ Â

Rs.Â Â Â Â Â 15,000/

Loss of estateÂ Â

Rs.Â Â Â Â Â 15,000/-

Loss of consortiumÂ Rs.Â 40,000/-

Â TotalÂ

Â Rs.Â 7,86,800/-

12. The respondent No. 3, National Insurance Co. Ltd. shall satisfy the above award withinterest as fixed by the learned Tribunal by depositing the

same with the jurisdictional Tribunal within 6 weeks. Any payment made in the meantime towards satisfaction of the award shall be adjusted. It is

made clear that the future prospect added to the actual income shall not carry any interest.

13. The Tribunal shall ensure that 50% of the awarded amount with interest be fixeddeposited in the name of the claimant for a period of 2 years and

25% for a period of nine months in a nationalized bank. Rest of the amount shall be released to the claimant by A/C payee cheque.

14. The appeal is disposed of.

15. Send back the LCR.

