

(2017) 09 CHH CK 0006
In the Chhattisgarh High Court
Case No : 1000 of 2010

Tarshiyush Tirky & Ors

APPELLANT

Vs

Santosh Sarkar & Ors

RESPONDENT

Date of Decision : 19-09-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173,
Section 173, Section 166, Section 166 - Appeals - Application for compensation

Citation : (2017) 09 CHH CK 0006

Hon'ble Judges : P. Sam Koshy

Bench : Single Bench

Advocate : Amit Sharma, Tarkeshwar Nande, Sourabh Sharma

Final Decision : Dismissed

Judgement

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the same award dated 28.6.2010 passed by the Additional Motor Accident Claims Tribunal, Jashpur, in Claim Case No. 20/2007.
2. Vide the impugned award dated 28.6.2010, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs. 15,60,580/- to the claimants along with interest thereon at the rate of 4% per annum from the date of filing of claim application, fastening the liability for payment of the same jointly and severally upon the driver, owner and insurer of the offending vehicle.
3. MAC No. 1000/2010 is an appeal preferred by the claimants seeking enhancement of the compensation awarded by the Tribunal. Whereas, MAC No. 1088/2010 is an appeal filed by the insurance company assailing the quantum part as well as liability assessed by the Tribunal.
4. It is a case where on 29.8.2007 the deceased-Lusia Tirkey sustained grievous injuries and later on succumbed to the injuries, on account of a vehicular

accident by Truck No. WB23-B/3038 which was driven by Santosh Sarkar, owned by Raj Mohan Prasad Kushwaha and insured with Reliance General Insurance Company, giving rise to the filing of the claim application out of which the present appeals arise.

5. For the sake of convenience, this Court intends to decide the appeal of the insurance company first.

6. The contention of the learned counsel appearing for the insurance company is that the income of the deceased assessed by the Tribunal is on the higher side and secondly that the Tribunal has wrongly fastened the liability upon the insurance company inasmuch as the Tribunal has failed to appreciate the fact that the driver of the offending vehicle did not have a valid driving licence at the relevant point of time.

7. The perusal of the record would show that the insurance company has not led any evidence to substantiate its contentions. In the absence of any evidence on the part of the insurance company, both to show that the income assessed by the Tribunal was either erroneous or on the higher side, or the fact that the driver at the relevant point of time did not have a valid driving licence, the grounds raised by the insurance company assailing the impugned award do not have any force. Thus, the appeal of the insurance company being devoid of merits the same deserves to be and is accordingly rejected.

8. So far as the appeal of the claimants seeking enhancement of compensation is concerned, learned counsel for the claimants submits that the income assessed by the Tribunal is unreasonably low inasmuch as the Tribunal has taken the monthly income of the deceased as Rs.21,265/- whereas the pay-slip for the month of July, 2007 which was produced before the Tribunal as Exhibit P-13, reflects the gross income of the deceased to be more than Rs.32,000/-. According to the claimants, the deductions which have been accepted by the Tribunal also have to be added to the gross income and that except for the tax part which has been deducted, the rest of the amounts are all part of the income of the deceased.

9. Considering the contentions of the claimants and on perusal of the record, this Court is of the opinion that the submissions of the claimants do have force in it and this Court has no hesitation in accepting the fact that except for the deductions towards the income tax, professional tax, or, for that matter, the club allowances which have been deducted, rest of the deductions made are either statutory deductions or are in other way income of the deceased. The total amount of deductions according to this Court which have been wrongly brought under the head of deductions would be Rs.7170/- which need to be added to the income of the deceased assessed by the Tribunal, i.e., Rs.21,265/-.

10. Accordingly, if Rs.21,265/- is added with Rs.7170/-, the monthly income of the deceased would be Rs.28,435/- of which if 1/4th is deducted towards the personal expenses the amount which would come is Rs.21,326/- which if

multiplied by 12, the yearly income would come to Rs.2,55,912/- which again applying the multiplier of 11 (instead of 9 that has been applied by the Tribunal) as has been laid down in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another, 2009 (6) SCC 121, the total compensation payable would be Rs.28,15,032/-. It is thus ordered that the claimants shall be entitled for a compensation towards loss of dependency for Rs.28,15,032/-, instead of Rs.15,31,080/- as was quantified by the Tribunal.

11. Further, so far as the compensation awarded under the conventional heads is concerned, considering the decision of the Hon"ble Supreme Court in Rajesh and Others v. Rajbir Singh and Others, 2013 (9) SCC 54, this Court has no hesitation in reaching to the conclusin that the amount of compensation of Rs.29,500/- awarded by the Tribunal under the conventional heads is on the lower side and the same deserves to be enahnced and is accordingly enhanced to Rs.1,25,000/-.

12. Thus, the total compensation which the claimants shall be entitled for is Rs.29,40,032/- which is being rounded off at Rs.29,40,000/-, instead of Rs.15,60,580/- as has been awarded by the Tribunal. Rest of the award including the interest part remains intact. It is thus ordered accordingly.

13. In the result, the appeal of the insurance company stands dismissed being devoid of merits and the appeal of the claimants is allowed to the aforesaid extent.