(2005) 10 GAU CK 0012

In the Gauhati High Court

Case No : MAC Appeal No. 59 of 2005

Uma Gope Choudhury APPELLANT

Vs

Kanai Deb and Others RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2006) 4 ACC 529 : (2006) 2 GLR 406 : (2005) 4 GLT 168 : (2004) 4 GLT 168

Hon'ble Judges : A.B. Pal, J;A. Hazarika, J

Bench : Division Bench

Advocate : Sujata Deb Gupta, for the Appellant; A. Lodh, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short ''the Act''), is directed against the judgment dated 23.3.2005 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in S.(MAC) 590 of 2003

2. The core question to be decided in the instant appeal is whether the amount of pension can be deducted, while assessing the income of the deceased.

3. The appellant had filed an application u/s 166 of the Act before the Motor Accident Claims Tribunal, West Tripura, Agartala, stating, inter alia, therein that the husband of the claimant appellant died on 24.9.2003 at about 1.50 p.m. at Chalitabari-Teliamura-Khowai road under Teliamura Police Station, West Tripura District, due to rash and negligent driving of both the offending vehicles, bearing Registration No. TR-01-1921 (Canter Truck) and TR-01-2994 (Commander Jeep). The deceased husband of the appellant was the passenger of the vehicle, bearing Registration No. TR-01-2994 (Commander Jeep). The husband of the appellant sustained bleeding injury on his head and other parts of his body. Soon after the accident, the deceased was shifted to Teliamura Rural Hospital and attending Doctors of the hospital declared him dead on the same day after some time. The

husband of the appellant was a Government employee, a Grade-II driver and he was posted in the establishment of the Assistant Director of Horticulture and Soil Conservation, Khowai Sub-Division under the department of Agriculture, Tripura and his monthly salary was Rs. 7,014 only, The claimant-appellant claimed Rs. 29,25,000 only as compensation.

4. The respondent opposite party Nos. 1 and 2 (Owners of the vehicles and the respondent opposite party No. 3 who is the insurer of both the vehicles were arrayed as opposite parties in the claim application before the Tribunal and the respondent Opposite Party Nos. 1, 2 and 3 entered into appearance and contested the claim by filing written statement. On the basis of the pleadings the learned Tribunal framed two issues for adjudication and determination of the claim filed u/s 166 of the Motor Vehicles Act, which are quoted hereunder:

(a) Whether Jaharlal Gope Choudhury died in a vehicular accident due to rash and negligent driving of the vehicle Nos. TR-01-1921 and TR-01-2994 on 24.9.2003 ?

(b) Whether the Claimant petitioner is entitled to get any compensation under Motor Vehicles Act, if so, what should be the quantum of compensation and who shall be held liable to pay the compensation ?

5. On the issues framed by the learned Tribunal, the claimant appellant adduced oral and documentary evidence. The respondent opposite party Nos. 1, 2 and 3 did not adduce any oral evidence, but filed some documents only.

6. After hearing both the sides, the learned Tribunal delivered the judgment on 23.3.2005 by allowing the claim petition awarding, compensation of Rs. 4,99,856 to the appellant. While awarding the compensation, the learned Tribunal hold that, on calculation, as per the Pension Rules, it reveals that the claimant/wife is entitled to Rs. 2,275 as family pension per month and the said amount was, therefore, deducted from the total salary of Rs. 7,014 and accordingly, deducting the aforesaid amount of Rs. 2,275 from the total salary, awarded the amount of Rs. 4,99,856 to the claimant wife as compensation.

7. We have heard Ms. Sujata Deb (Gupta), learned Counsel for the appellant and Mr. Arindam Lodh, learned Counsel appearing on behalf of the respondent No. 3. None appeared on behalf of respondent Nos. 1 and 2.

8. Learned Counsel Ms. Sujata Deb (Gupta) appearing on behalf of the appellant claimant submits that the learned Tribunal committed a serious error in assessing the income of the deceased, inasmuch as, there could be no reduction on account of pension.

9. The learned Counsel for the appellant has relied upon the following decisions in support of her submission.

The Oriental Insurance Company Ltd. Vs. Smt. Narinder Kaur and others,

Smt. Laxmi Devi Dwivedi and Others Vs. State of M.P. and Others, In Oriental Insurance Co. Ltd. (supra) the learned Court at para 17 held as follows:

17. In relation to the compensation awarded to the heirs of Atinderjit Singh, it has been submitted that the Tribunal had, while working out the compensation payable to them deducted sum of Rs. 1,050 which according to the learned Counsel would be payable to the heirs on account of family pension. This part of the deduction is assailed on behalf of the appellants on the ground that the same is contrary to the view taken by a Full Bench of this Court in Bhagat Singh''s case 1983 ACJ 203 (P&H), wherein it has been observed, "that financial benefits like insurance, provident fund, family pension or gratuity are in essence the deferred earnings of the victim of the accident or the result of his savings, his thrift or foresight. The dependants, even otherwise, would have had the benefit of these sums in due course. To take these away from the rightful claimants and to enure them only for the benefit of the tortfeasor is something, which rightly shocks the judicial conscience. That the receipt of insurance, provident fund, pension or gratuity benefits by the dependents of the victim of any automobile accident must be altogether excluded from consideration in the award of compensation to them. "To the same effect are the judgments in The Oriental Insurance Co. Ltd. Vs. Gowramma and others, and Pallavan Trans. Corporation Ltd. (Metro) v. P. Murthy 1989 ACJ 413 (Mad.).In this view of the matter, the deduction made by the Tribunal of Rs. 1,050 from Rs. 3,856 while working out the dependency of the heirs of the deceased cannot be sustained. The compensation will have to be worked out by taking into consideration the monthly salary as Rs. 3,856 on the basis of which the compensation will come out to Rs. 5,56,264. This amount shall be payable to the claimants with 12 per cent interest w. e. f. the date of their application till realisation as per the directions of the Tribunal.

10. In Laxmi Devi Dwivedi and Ors. (supra), the Division Bench of Madhya Pradesh High Court, held that there could be no reduction on account of pension. While holding the same, the learned Court placed reliance on Division Bench decisions of the same Court in Ajit Singh and Others Vs. The State of Punjab and Others, which after taking into consideration some decisions of the same Court, held that in view of consisted view of the court, family pension payable to the widow of deceased is not to be deducted from the amount of compensation awarded.

11. Having regard to the aforesaid decisions, we hold that the deduction made by the Tribunal of Rs. 2,275 as family pension from the total salary of Rs. 7014 cannot be sustained. The compensation will have to be worked out by taking into consideration the monthly salary as Rs. 7,014 ; on the basis of which the compensation will come out to Rs. 7,29,456. This amount shall be payable to the appellant/claimant along with Rs. 5,000 as loss of her consortium and Rs. 2,000 as funeral expenses as already awarded by the learned Tribunal. The impugned award stands modified accordingly. The enhanced amount of compensation also would carry interest at the rate of 6% per annum from the date of award. The

respondent Insurance Company is directed to deposit the amount for compensation payable within a period of three months from today. Needless to say that, in doing so, the amount already paid shall stand deducted from the amount payable in terms of this judgment and order.

10. For the reasons aforesaid, this appeal is allowed.

11. Compensation awarded to the appellant/claimant is modified to the extent indicated above.

12. Parties are directed to bear their own cost.