(1995) 09 PAT CK 0013

In the Patna High Court

United India Insurance Company Ltd. APPELLANT

Vs

Chinta Devi and Others RESPONDENT

Date of Decision : 04-09-1995

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (1997) 1 ACC 173

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Judgement

P.K. Deb, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the above named Insurance Company against the judgment and award dated 17.9.1990 passed by Shri S.N. Gupta, 1st Additional Judicial Commis-sioner, Ranchi-cum-Motor Vehicle Accident Claims Tribunal in Compensation Cases Nos. 37 of 1985 & 106 of 1990 whereby an award of compensation of Rs. 2,32,000/- was made in favour of the respondent Nos. 1 to 7, who happened to be the legal heirs of deceased Sheonath Mahli.

2. The deceased Sheonath Mahli was a Class-Ill employee of Ranchi Civil Court and on 15.3.1985 at about 8.30 p.m. while he was travelling on an auto Rickshaw bearing Registration No. BHV-9690 and when the said auto rickshaw reached near the M.P. Service Petrol Pump near village Sapora, a Mini bus bearing Registration No. BHN 8825 coming from the opposite direction in high speed dashed against the auto rickshaw and ran over the same. For such dashing and turning over, the auto rickshaw was dragged by the Mini bus for a distance of about 50 feet alongwith its occupants. One of the occupants, namely, Shenonath Mahli and the auto rickshaw driver died at the spot.

3. In the claim petition, it was mentioned that the deceased was aged about 33 years and was drawing a salary of Rs. 1130/- per month. The driver, owner and the Insurance Company of the offending vehicle (Mini Bus) were made parties and they contested the claim case by filing written statement. In the evidence adduced on the side of the claimants, it was held that the accident occurred due

to rash and negligent driving of the Mini Bus and the Auto Rickshaw was on its right side and travelling on the right keeping the other side open. Learned Court below after scrutinizing the evidence on record held the mini bus as offending one and as the same was insured with the appellant-Insurance Company, the awarded amount was directed to be paid by the Insurance Company itself.

4. Mr. K.S. Mazumdar, appearing for and on behalf of the appellant raised the first question that the Insurance Company had limited liability per passenger u/s 95(2) of the Old Act. By filing counter affidavit, it has been stated that the owner of the Mini Bus gave extra premium for getting the comprehensive policy with unlimited third party risk.

5. During the course of argument, Mr. Mazumdar did not press that point, but he pressed on the quantum of compensation stating that the multiplier of 33 was used holding the span of life as 70 years and the dependency was calculated informality for the whole 33 years which is bad on the face of it as the deceased being a Government employee in Ranchi Civil Court ought to be retired at the age of superannuation i.e., 58 years.

6.There is force in the submission of Mr. Mazumdar and the learned Counsel for the claimants also conceded to the same. The age of the deceased although claimed to be 33 years but from the service book, it was found to be 37 years at the relevant date of accident. The monthly emoluments of the deceased was assessed at Rs. 1130/- per month on the basis of oral evidence and the documentary evidence and on this, dependency was calculated at the rate of Rs. 850/- per month and as such the annual dependency was calculated as Rs. 10,000/-per year making it a round amount. Oh such calculation, there is no much dispute as is found from the arguments placed before me by both the sides. Then up to 58 years, considering the above dependency, the amount comes up as Rs, 2,10,000/-. The deceased after superannuation could have received more than Rs. 800/- towards pension considering his rise of pay by revision and promotion.

Dependency may be assessed at that period after superannuation at Rs. 400/- per month then annual dependency comes to be Rs. 4,800/- and considering the life span as 70 years for balance of 12 years the compensation can be assessed by a multiplier of 12 which comes to be 4800 x 12: 57,600/- then the total amount comes to be Rs. 2,67,600/- .25 per cent of the same has been deducted towards uncertainly of life and the amount comes to Rs. 2,00,700/- only. From this amount Rs. 15,000/- has to be deducted as already paid u/s 92A of the Motor Vehicles Act, therefore net amount of compensation payable apart from the interest comes to be Rs.1,85,700/-making it around figure, it comes to be Rs. 1,85,000/-. As there is comprehensive policy and the liability towards third party is unlimited. The appellant-Insurance Company is liable to pay the whole of the awarded compensation.

7. On the point of interest, the submissions made on behalf of the appellant,

there is force. There is no scope of enhancement of interest in default of payment with retrospective effect. In this case, already 12 per cent interest have been assessed u/s 110-CC of the Act and the whole amount of interest of 12 per cent is asked to be paid within two months from the date of application upto the date of award. Again towards penalty, 18 per cent interest is asked to be paid if the amount is not paid within the stipulated period after the expiry of two months of the award.

Normally such interest may be awarded in an enhanced rate if at the initial stage the interest is assessed at a lower rate. But, here it is found that 12 per cent interest had already been assessed and as such I do not find that 18 per cent interest would be proper, rather the same would be in higher rate. The enhancement of interest is only raised to 15 per cent per annum to be paid by the Insurance Company from the date of expiry of the stipulated period up to the date of payment.

8. With the above modification, the appeal is rejected. No order as to cost.