(2012) 11 PAT CK 0078

In the Patna High Court

Case No : Miscellaneous Appeal No. 463 of 2010

Vishvanand Prasad APPELLANT

Vs

Sanjay Mistry RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) 2 BBCJ 460

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

Bench : Single Bench

Advocate : Mr. Rajesh Kumar, Advocate, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Mr. Rakesh Kumar, J. (Oral)—Heard Sri Rajesh Kumar, learned counsel for the appellants, Sri Ashok Priyadarshi, learned counsel, who has appeared on behalf of respondent nos. 3 & 4/National Insurance Company Ltd. and Sri Bimlesh Kumar Jha, learned counsel, who has appeared on behalf of respondent nos. 7 & 8/Oriental Insurance Company Ltd.

2. The present appeal under Section 173 of the Motor Vehicle Act (hereinafter referred to as "M.V.Act") has been preferred by the claimants/appellants against the Judgment dated 30-03-2010 and Award dated 19-04-2010 in Claim Case No. 80 of 2008 passed by the learned Additional District Judge-XI, Patna (hereinafter referred to as "Addl. District Judge"), whereby, the learned Addl. District Judge has directed the respondent nos. 3 & 4 (National Insurance Company Ltd.) and 7 & 8 (Oriental Insurance Company Ltd.) to pay total compensation amount of Rs. 1,54,500/- after deducting interim compensation amount i.e. Rs. 50,000/- already paid in view of Section 140 of the M.V.Act. The compensation amount is to be distributed equally by both the respondents.

3. The appeal has primarily been filed by the Claimants/appellants for enhancement of the compensation amount. In this case, only plea for

enhancement of compensation amount has been taken is that amount of notional income instead of Rs. 15,000/-, as prescribed in Schedule-II of the M.V.Act, was required to be treated as Rs. 36,000/- per annum in view of judgment of the Hon''ble Apex Court, reported in (2008) 12 Supreme Court Cases 165 (Laxmi Devi And Others v. Mohammad Tabbar And Another). It was submitted that in the present case, accident had occurred in the year 2006, whereas Rs. 15,000/-, as notional income was introduced in Schedule-II of the M.V.Act long back in the year 1994 and as such, minimum Rs. 36,000/- was required to be taken as notional income.

4. Short fact of the case is that son of claimants/appellants, namely; Manish Kumar was moving on a pick-up van, bearing registration no. BR-25-6175, on 24-07-2006. On the said date, his pick-up van was dashed by a Tankar, bearing registration no. BR-2G-5111. The accident had occurred at about 9:30 P.M. near Langari Khajoor Pul in Gaurichak Police Station area. In the said accident, son of appellants died, thereafter, an F.I.R., vide Gaurichak Police Station Case No. 60 of 2006 was registered. After investigation, charge-sheet was submitted. In view of death of son of appellants in the said vehicular accident, claim petition was filed, claiming compensation of Rs. 3,00,000/-. However, after hearing the parties and considering the evidence on record, the learned Addl. District Judge, by the impugned order, has allowed the claim petition and directed to pay the compensation, as indicated above. Since it was a case of contributory negligence, insurers of both the vehicles have been directed to pay compensation amount equally.

5. Since against the judgment and award, no appeal has been preferred by either of the insurance companies, there is no need to go into detail of the case. Only plea was taken for enhancement of the compensation amount, in view of judgment of the Hon''ble Apex Court in Laxmi Devi''s case (supra).

6. Learned counsel for both the Insurance Companies have not disputed the proposition of law. They have also agreed for calculating the compensation amount of Rs. 36,000/- per annum, as notional income. At the time of death of the deceased, he was aged about 23 years. Since he was unmarried, age of mother of the deceased, who is appellant no. 2, was taken into account. Her age was about 40 years.

7. Accordingly, after deducting ?rd , as personal expenses of the deceased from Rs. 36,000/-, the amount comes to Rs. 24,000/- [i.e. Rs. 36,000.00 ? Rs. 12,000.00 (Rs. 36000.00 X ? = Rs. 12,000.00) = Rs. 24,000.00] and keeping in view the age of mother of the deceased as 40 years multiplier of 16 is applicable and as such, the amount comes to Rs. 3,84,000.00 (i.e. Rs. 24,000.00 X 16 = Rs. 3,84,000.00). Funeral expenses and loss of Estate, as granted by the learned Addl. District Judge, appears to be appropriate i.e. Rs. 2,000/- and Rs. 2,500/- respectively. Accordingly, the total compensation amount comes to Rs. 3,88,500/- (i.e. Rs.3,84,000.00 + Rs. 2,000.00 + Rs. 2,500.00 = Rs. 3,88,500.00).

8. Accordingly, both the insurance companies i.e. respondent nos. 3 & 4 and 7 & 8 are directed to pay the compensation amount after deducting the amount already paid to the claimants. The remaining amount is directed to be paid equally by both the insurance companies. The remaining amount is to be paid along with interest @ 6% per annum, which is to be calculated from the date of filing of the claim petition till the date of payment. Both the insurance companies are directed to pay the remaining compensation amount with interest at the rate of 6% per annum within a period of two months from the date of receipt/ production of a copy of this order.

9. The appeal stands allowed.