Prabhawati Devi and ors. Vs. Dilip Kumar and ors.

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Court : Chhattisgarh

Decided On : Feb-14-2008

Reported in : 2009ACJ1288; 2008(2)MPHT1(CG)

Judge : Rajeev Gupta, C.J. and; L.C. Bhadoo, J.

Appellant : Prabhawati Devi and ors.

Respondent : Dilip Kumar and ors.

Advocate for Def. : Shri. Abhishek Sinha

Advocate for Pet/Ap. : Shri. Santosh Yadu

Judgement :
ORDER

Rajeev Gupta, C.J.

1. This is claimants' appeal filed under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act') for enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Durg, (henceforth 'the Tribunal'), vide award dated 8-4-1996 passed in Claims Case No. 16/1994.

2. The claimants, unfortunate widow and children of deceased R.K. Ram, claimed compensation of Rs. 5,50,700/- by filing the claim petition under Section 166 of the Act for his death in the motor accident when on 23-1 -1994 he was dashed by the

offending vehicle tempo bearing registration No. MP 24T 0053, resulting in multiple serious injuries to deceased R.K. Ram, who succumbed to those injuries during the course of his treatment in the hospital on 26-1-1994. The claimants further pleaded that deceased R.K. Ram used to earn Rs. 4,900/- per month as salary from Bhilai Steel Plant and was also getting bonus of Rs. 4,040/- per year.

3. The owner, driver and insurer of the offending vehicle- Tempo contested the claim and denied their liability to pay compensation to the claimants. The driver of the Tempo took the plea that the deceased himself was responsible for the accident, whereas the owner pleaded that the liability to pay compensation to the claimants would be that of the Insurance Company as the Tempo was insured on the date of the accident. The insurer of the Tempo pleaded that the Tempo was being plied in breach of the policy conditions.

4. The claimants examined Smt. Prabhavati (A.W. 1) and Jawahar Chouhan (A.W. 2) in support of their claim, whereas the owner, driver and the insurer of the Tempo did not examine any witness in rebuttal.

5. The Tribunal on the evidence led by the parties held that deceased R.K. Ram died on 26-1-1994 on account of the injuries sustained by him in the motor accident on 23-1-1994; the accident occurred due to rash and negligent driving of the driver of the offending vehicle - Tempo; as the offending vehicle Tempo was insured with United India Insurance Company Ltd., on the date of the accident, the Insurance Company was liable to pay compensation to the claimants.

6. The Tribunal on a close scrutiny of the evidence led by the claimants about the income of deceased R.K. Ram including his salary certificate, assessed his income at Rs. 1,167/- per month. By deducting a sum of Rs. 389/-towards personal expenses, the claimants' pendency was assessed at Rs. 775/-per month and Rs. 9,300/- per annum. By multiplying the annual dependency of Rs. 9,300/- with the multiplier of 8, the compensation was worked out to Rs. 74,400/-. The Tribunal further directed payment of interest @ 12% per annum in the event of the insurer's failure to pay the compensation to the claimants within a period of one month from the date of the award.

7. Shri Santosh Yadu, learned Counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 1,167/-per month, whereas the deceased was getting gross salary of Rs. 4,900/- per month; in selecting the lower multiplier of 8; in awarding low compensation of Rs. 74,400/- only; and in not awarding interest on the amount of compensation and only directing conditional payment of interest in the event of insurer's failure to pay compensation within a period of one month from the date of passing of the award.

8. Shri Abhishek Sinha, learned Counsel for respondent No. 3 - United Insurance Company Ltd. on the other hand supported the award and submitted that the income of the deceased has been rightly assessed by the Tribunal at Rs. 1,167/- per month as the same was his 'take-home' salary. Learned Counsel further submitted that the multiplier of 8 selected by the Tribunal is also appropriate in the case as the deceased had only 7 years of service left on the date of the accident.

9. The findings recorded by the Tribunal that deceased R.K. Ram sustained injuries in the motor accident on 23-1-1994 and died on account of those injuries on 26-1-1994; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Tempo; and the Insurance Company was liable to pay compensation to the claimants, have now attained finality as the respondents have not filed any appeal against the award.

10. That apart, there is overwhelming evidence on record to establish the above facts beyond any shadow of doubt. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

11. The claimants pleaded that deceased R.K. Ram used to get salary of Rs. 4,900/- per month from Bhilai Steel Plant. In support of their plea, the claimants adduced the documentary evidence of his salary slip (Exh. D-2) and a certificate from the employer (Exh. D-3). The salary slip of the deceased reveals that the basic pay of the deceased was Rs. 3,001/- and with the amount of dearness allowance of Rs. 1,422.50 and other allowances, his gross pay was Rs. 4,900.93. The salary slip further reveals that a sum of Rs. 176/- was being deducted towards income tax; Rs. 65/- as current rent; Rs. 6.19 towards electricity charges and some other petty deductions under other heads. The major deduction of Rs.

3,000/- from the salary of the deceased was towards repayment of loan taken by him from his provident fund account. It was on account of the above deductions that the 'take-home' salary of the deceased was shown at Rs. 1,167/- and the same was taken by the Tribunal as the income of the deceased on the date of the accident.

12. Shri Santosh Yadu, learned Counsel for the appellants placing reliance on a recent dictum of the Apex Court in the case of National Insurance Company Ltd. v. Indira Shrivastava and Ors. reported in 2008 AIR SCW 143, submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 1,167/- only.

13. On a thorough scrutiny of the salary slip and in view of the recent dictum of the Apex Court in the case of National Insurance Company Ltd. v. Indira Shrivastava and Ors. (supra), we are of the opinion that the Tribunal's assessment of the income of deceased R.K. Ram on the basis of his 'take-home' salary at Rs. 1,167/- cannot be sustained. We, therefore, find it necessary to reassess the income of the deceased and to re-compute the compensation.

14. Deceased R.K. Ram in the month of January, 1994 was getting gross salary of Rs. 4,900/-. By deducting a sum of Rs. 400/- towards permissible deductions, the income of the deceased is assessed at Rs. 4,500/- per month.

15. By deducting l/3rd of Rs. 4,500/- towards personal expenses of the deceased, the claimant's dependency is assessed at Rs. 3,000/- per month and Rs. 36,000/- per annum.

16. The Tribunal selected multiplier of 8. In our opinion, the multiplier of 8 selected by the Tribunal is on the lower side. Deceased R.K. Ram on the date of the accident was aged about 51 years, whereas his widow - claimant No. 1 Smt. Prabhawati Devi was shown aged about 48 years in the claim petition. In our considered view, multiplier of 10 would be appropriate in the present case.

17. By multiplying the annual dependency of Rs. 36,000/- with the multiplier of 10, the compensation works out to Rs. 3,60,000/-. The claimants are further entitled to get Rs. 5,000/- towards loss of consortium to the widow; Rs. 2,500/- towards loss

of estate; and Rs. 2,000/- towards funeral expenses. The claimants, thus, become entitled to receive a total sum of Rs. 3,69,500/- as compensation for the death of deceased R.K. Ram in the motor accident.

18. Considering the prevalent rate of interest in the Nationalized Banks on the fixed deposit, we award interest @ 6% per annum on the enhanced amount of compensation from the date of filing of the claim petition till the date of the actual payment.

19. Respondent No. 3 - United India Insurance Company Limited is granted three months time for depositing the enhanced amount of compensation and the amount of interest due thereon before the concerning Claims Tribunal.

No order as to costs.