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Court : Chhattisgarh

Decided On : Feb-21-2008

Reported in : 2008(2)MPHT59(CG)

Judge : Rajeev Gupta, C.J. and; Dhirendra Mishra, J.

Appellant : Rajmati and ors.

Respondent : Anil Kumar and ors.

Advocate for Pet/Ap. : Shri. Saurabh Sharma

Judgement :
ORDER

Rajeev Gupta, C.J.

1. This is claimants' appeal for enhancement of the compensation awarded by 1st Motor Accidents Claims Tribunal Bilaspur (for short 'the Tribunal') vide award dated 2-11-1999 passed in Claim Case No. 25/1998.

2. The claimants, unfortunate mother, step mother and younger sister of deceased Dilesh Kumar claimed compensation of Rs. 5,65,000/- for his death in the motor accident on 17-2-1998 when the cycle on which he was travelling as a pillion-rider was dashed by the offending vehicle truck bearing registration number MBT-9386 resulting in his instantaneous death on the spot itself. The claimants further pleaded that the deceased-Dilesh Kumar, who was aged about 22 years, used to

earn Rs. 100/- per day.

3. The driver of the offending vehicle-truck did not contest the claim and was proceeded exparte before the Tribunal. The owner and insurer of the truck contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that the cyclist himself was responsible for the accident, whereas, insurer pleaded that the driver of the truck was not holding a valid driving license and the truck was being plied in breach of the policy conditions.

4. The claimants examined Rajmali (A.W. 1), Rameshwari (A.W. 2) and Jagdev (A. W. 3) in support of their claim, whereas, the owner and insurer of the truck did not examine any witness in rebuttal.

5. The Tribunal on a close scrutiny of the evidence led before it held that Dilesh Kumar died on account of injuries sustained by him in the motor accident on 17-2-1998; the accident occurred due to rash and negligent driving of the driver of the offending vehicle truck; as the truck was insured on the date of the accident with United India Insurance Company Limited, the Insurance Company was liable to pay the compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable by the Tribunal, the income of the deceased was assessed by the Tribunal at Rs. 15,000/- per annum on the basis of notional income prescribed in the Second Schedule under Section 163A of the Motor Vehicles Act. By deducting l/3rd of Rs. 15,000/- as the personal expenses of the deceased, the claimant's dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of 12, the compensation was worked out to Rs. 1,20,000/-. By awarding further sum of Rs. 10,000/- under the other permissible heads, the Tribunal awarded a total sum of Rs. 1,30,000/- as compensation to the claimants for the death of Dilesh Kumar in the motor accident on 17-2-1998. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,30,000/-@ 12% per annum from the date of filing of the claim petition till actual payment.

7. Shri Saurabh Sharma, learned Counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only; in selecting the lower multiplier of 12; and in awarding low compensation of Rs. 1,30,000/- only.

8. Shri Vinay Harit, learned Senior Counsel for respondent No. 3-United India Insurance Company Limited on the other hand supported the award and contended that the compensation of Rs. 1,30,000/- awarded by the Tribunal is just and proper compensation of in the facts and circumstances of the present case.

9. The findings recorded by the Tribunal that deceased Dilesh Kumar died on account of the injuries sustained by him in the motor accident on 17-2-98; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle-truck; and the Insurance Company of the truck was liable to pay compensation to the claimants have now attained finality as the respondents have not filed any appeal against the award. In fact, these findings are not under challenge before us in this appeal. That apart, there is overwhelming evidence of Rajmati (A.W. 1), Rameshwari (A.W. 2) and Jagdev (A.W. 3) available on the record to establish the above facts beyond any shadow of doubt. We, therefore, affirm the finding recorded by the Tribunal in that behalf.

10. In a motor accident claim case what is important is that the compensation to be awarded by the Courts/Tribunal should be just and proper compensation in the facts and circumstances of the case. The compensation to be awarded should neither be a meager amount, nor a bonanza. Now, we shall examine as to whether the compensation of Rs. 1,30,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

11. The claimants pleaded that deceased Dilesh Kumar was aged about 22 years and used to earn Rs. 100/- per day. The evidence led by the claimants about the income of the deceased was not of clinching nature. We, therefore, do not find any fault in the approach of the Tribunal in discarding the claimant's evidence about the income of the deceased. Nevertheless, the notional income of Rs. 15,000/- was prescribed in the Second Schedule under Section 163A of the Motor Vehicles

Act in the year 1994 and the accident in which deceased Dilesh Kumar lost his life took place in the year 1998.

12. If the increase in the prices of essential commodities and the cost of living between the year 1994 and 1998 is taken into account, the notional income of Rs. 15,000/- prescribed in the Second Schedule in the year 1994 would come to Rs. 18,000/- in the year 1998. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 18,000/- per annum.

13. As there were four members in the family of the deceased, we deem it proper to deduct only a sum of Rs. 3,000/- per annum towards the personal expenses of the deceased. By deducting Rs. 3,000/- from the income of Rs. 18,000/-, the claimants' dependency is assessed at Rs. 15,000/- per annum. The multiplier of 12 selected by the Tribunal considering the age of the deceased and the claimants, in our opinion, is appropriate.

14. By multiplying the annual dependency of Rs. 15,000/- with the multiplier of 12, the compensation works out to Rs. 1,80,000/-. The claimants are further entitled to Rs. 2,000/- towards funeral expenses and Rs. 3,000/- towards loss of estate. Thus, the claimants become entitled to receive a total sum of Rs. 1,85,000/- as compensation for the death of Dilesh Kumar in the motor accident on 17-2-98.

15. Considering all the relevant factors including the delay in the disposal of the claim petition and the appeal, and the fact that Insurance Company alone is not to be blamed for the delay in the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs. 55,000/- at Rs. 10,000/-.

16. For the foregoing reasons, the appeal filed by the appellants under Section 173 of the Act for enhancement of the compensation is allowed in part. The compensation of Rs. 1,30,000/- awarded by the Tribunal is enhanced to Rs. 1,85,000/- with further quantified amount of interest of Rs. 10,000/- on the enhanced amount of compensation of Rs. 55.000/-.

17. Respondent No. 3-United India Insurance Company Limited is granted three months' time for depositing the sum of Rs. 65,000/- (Rupees Sixty five thousand

only) (Rs. 55,000/- towards enhanced amount of compensation + Rs. 10,000/- towards interest on the enhanced amount of compensation) before the concerned Claims Tribunal.

18. No orders as to costs.

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