Dalsingh Vs. Shantilal and ors.

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Court : Madhya Pradesh

Decided On : Jun-25-2007

Reported in : 2008ACJ2780

Judge : N.K. Mody, J.

Appellant : Dalsingh

Respondent : Shantilal and ors.

Advocate for Def. : Mr. Pradeep Gupta

Judgement :

N.K. Mody, J.

1. Being aggrieved by the inadequacy of the amount awarded vide award dated 20.12.2006, passed by the M.A.C.T., Jhabua in Claim Case No. 98 of 2004, whereby a sum of Rs. 2,04,000, has been awarded, the present appeal has been filed.

2. The learned Counsel for the appellant submits that appellant was aged 40 years at the time of accident. Appellant was agriculturist by profession. The left leg of the appellant was amputated below knee. It is submitted that the learned Tribunal has awarded a sum of Rs. 2,04,000 breakup of which is as under:

Permanent disability Rs. 1,44,000Medical expenses,special diet andexpenses incurred onattendants Rs. 50,000Pain and suffering Rs. 10,000

3. The learned Counsel for the appellant submits that the appellant was hospitalised at Choithram Hospital from 8.7.2004 to 6.8.2004. It is submitted that income of the deceased was assessed on the basis of notional income at Rs. 15,000 per annum and permanent disability was assessed after applying multiplier of 16. Learned Counsel submits that since the accident took place in the year 2004, therefore, the base for assessing the notional income, which was fixed in the year 1994, cannot be taken. For this contention reliance was placed on a decision of a Division Bench of Uttaranchal High Court, in the matter of Shobhan Singh v. New India Assurance Co. Ltd. , wherein it was held that Sub-section (3) of section 163-A casts a duty on the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

4. As the Second Schedule has not been amended by the Central Government in spite of the iapse of period of more than 10 years, we deem it proper to take into consideration the steep hike in the price index of the essential commodities and the resultant increase in the cost of living. If the erosion in the purchase value of rupee during the period between 1994 and 2003, the year of the accident in the present case, is taken into consideration, the notional income of Rs. 15,000 prescribed in the Second Schedule in the year 1994, would, in the year 2003, come to Rs. 36,000 per annum. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs. 36,000 per annum.

5. Learned Counsel submits that in view of the aforesaid position of law the income of the appellant ought to have been taken as Rs. 3,000 per month.

6. Learned Counsel further submits that since the leg of appellant was amputated, therefore, the compensation awarded as Rs. 10,000, on account of pain and suffering is on lower side. For this contention reliance was placed on a decision of this Court in the matter of Ravindra Joshi v. Tansukh Lal 2007 (1) DMP 221, wherein the Hon'ble Division Bench of this Court awarded a sum of Rs. 4,00,000 in a case where there was amputation of the left leg below knee.

7. It was observed that the claimant-appellant has to pull on his life as a permanent disabled person with use of one leg. In this case claimant was aged 25 years.

8. Further reliance was placed on the decision of Hon'ble Supreme Court in the matter of Grifan v. Sarbjeet Singh : JT2000(8)SC55 , wherein in case of amputation of the right leg, where the disability was assessed at the rate of 80 per cent, the Hon'ble Supreme Court awarded a sum of Rs. 4,00,000.

9. Mr. Pradeep Gupta, learned Counsel for the respondent No. 3 submits that the appellant is residing at village Jhabua. In the facts and circumstances the amount awarded is just and proper.

10. After taking into consideration all the evidence on record and in particular the fact that left leg of the appellant has been amputated below knee, it appears that the amount awarded is on the lower side. The income of the appellant has been assessed at Rs. 15,000 per annum, which comes to Rs. 41.67 per day. The accident took place in the year 2004 and the notional income at Rs. 15,000 per annum was fixed in the year 1994.

11. It is further to be noted that in the family of the appellant there were 11 members including appellant. In the facts and circumstances it appears that the income of the appellant is assessed on lower side, the income of the appellant ought to have been assessed at Rs. 100 per day and since the appellant was not getting the work for all the 30 days, therefore, for the purpose of calculation of compensation it ought to have been assessed on the basis of Rs. 2,500 per month. Similarly on account of pain and suffering the amount awarded is on the lower side. No amount has been awarded on account of expenses incurred on attendants, loss of wages when appellant was under treatment, loss of amenities and expectation of life.

12. In my opinion, it will be proper to enhance the compensation by Rs. 2,00,000 (Rs. 1,44,000 for permanent disability and Rs. 56,000 for other heads). In other words, in view of this, the claimant is held entitled for a total sum of Rs. 4,04,000 by way of compensation for the injuries sustained by the appellant. The enhanced

amount shall carry interest at the rate of 7.5 per cent per annum.

13. With the aforesaid modification the appeal stands disposed of. No order as to costs.