Tara Devi and ors. Vs. Mrs. Saifun Khatoon and anr.

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SooperKanoon Citation : sooperkanoon.com/522312

Court : Jharkhand

Decided On : Aug-11-2008

Reported in : [2008(4)JCR313(Jhr)]

Judge : M.Y. Eqbal and; Jaya Roy, JJ.

Appellant : Tara Devi and ors.

Respondent : Mrs. Saifun Khatoon and anr.

Disposition : Appeal allowed

Judgement :
ORDER

1. This appeal by the claimants-appellants is for enhancement of compensation. The deceased, Sharwan Kumar Agarwal, died in a motor vehicle accident on 8.3.2003. The claimants adduced evidence to the effect that the deceased was aged about 55 years and he was carrying on different businesses like retail medicine business, hosiery business and other businesses. In support of the earning of the deceased Income Tax Return certificate has been produced for the year 2002-03 showing the gross income of the deceased at Rs. 53,774/-. The Tribunal dealt with the evidence in paragraph 18 of the judgment, which is reproduced herein below:

In the claim petition it is further said that the deceased was doing business and supply and his monthly income was Rs. 5000/- and he was income tax assessee.

On the point of occupation and income of the deceased the plaintiffs witnesses have stated that the deceased was doing the business of supply of medicine and hosiery goods on commission basis and his monthly income was Rs. 5000/- per month. Ext. 2 is the income tax return which shows the gross annual income of the deceased Rs. 53,774/- in the assessment year 2000-2001. Ext. 3 is the balance sheet of the same assessment year i.e. 2000-2001 which shows the annual income of the deceased from supply and commission of medicine Rs. 25,000/- and remaining Rs. 28,774/- is the income from interest from UTI, Kisan Vikash Patra, NSC, Saving Bank Account etc. This Ext. shows that in the year 2000-2001 the deceased was doing business of supplying medicine on commission basis only it does not show that the deceased was also doing the business of supplying hosiery goods. Ext. 6 is the balance of assessment year 2002-2003 which shows the gross annual income of the deceased Rs. 51,098/-. It further shows that the annual income of the deceased from supply and commission of readymade and hosiery goods Rs. 22500/- and the remaining Rs. 28,598/- is the income from interest and dividend. This Ext. shows that in the year 2002-2003 the deceased was doing the business of supplying readymade and hosiery goods only and he was not doing the business of supplying medicine on commission basis. Since both the Exts i.e. Ext. 3 and Ext. 6 show the different nature of the business of the deceased in different years and it also shows the difference in the income of the deceased, therefore, the last balance sheet i.e. Ext. 3 which relates to the assessment year 2002-2003 is to be taken into consideration for determining occupation and income of the deceased. As stated above, that according to Ext. 3 in the assessment year 2002-2003 the deceased was doing the business of supplying readymade and hosiery goods and his gross annual income was Rs. 51,098/- out of which his annual income from supply and commission of readymade and hosiery goods was Rs. 22,500/- and remaining Rs. 28,598/- is income from the interest and dividend. Since the income from the interest and dividend will continue to yield profit to the dependents even after the death of the. deceased, therefore, it appears just and proper to calculate the compensation after deducting this part of the income of the deceased from his gross annual income. After deducting the income of the deceased derived from interest and dividend the annual income of the deceased comes to Rs. 22,500/-. Since the deceased was aged about 55 years at the time of his death, hence according to the schedule his multiplier is eight. Taking the income of the deceased Rs. 22,500/- and multiplying the same using the multiplier of eight, the compensation comes to Rs. 1,80,000/-. The one third amount will be reduced as the personal expenses of the decease, therefore, the amount of compensation comes to Rs. 1,80,000-Rs. 60,000/- Rs. 1,20,000/-. In addition to the plaintiffs are also entitled to Rs. 2000/- as funeral expenses Rs. 5000/- as loss of consortium and Rs. 2,500/- as loss of estate. Therefore, the total amount of compensation comes to Rs. 1,20,000 + RS. 2000/- + Rs. 5000/- + Rs. 2500 = Rs. 1,29,500/-.

2. Considering the evidence produced by the claimants- appellants, we are of the view that the Tribunal has not correctly recorded the finding with regard to income of the deceased. Admittedly, the deceased was a income tax payee. At no stretch of imagination, it can be inferred that the deceased was earning not even 3000/- per month. Accordingly, the income of Rs. 51,000/- should have been taken as the annual earning of the deceased for the purpose of calculation of compensation. If one third of the said amount is deducted the annual dependency comes to Rs. 34,000/- Taking multiplier of eight, as taken by the Tribunal, the amount of compensation comes to about Rs. 2,72,000/-. However considering the age of the deceased and also the gross annual income of Rs. 51,000/- as mentioned in the judgment, in our considered opinion a sum of Rs. 2,50,000/- must be a reasonable compensation.

3. This appeal is, therefore, allowed and the amount of compensation is enhanced to Rs. 2,50,000/-.