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Arat Das and ors. and Vs. Sailendra Kumar Nayak and ors.

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Court : Orissa

Decided On : Feb-22-2007

Reported in : 104(2007)CLT251

Judge : A.S. Naidu, J.

Appellant : Arat Das and ors. and ;The New India Assurance Company Ltd.

Respondent : Sailendra Kumar Nayak and ors.

Judgement :

A.S. Naidu, J.

1. The same Judgment and award of compensation passed by the Learned 1st Addl. District Judge-cum-1st MACT, Cuttack in M.V. Misc. Case No. 995 of 1999 is assailed in both the aforesaid M.As.

M.A. No. 488 of 2001 has been filed by the Petitioners before the Tribunal seeking enhancement of the compensation awarded by the Tribunal, while M.A. No. 524 of 2001 has been filed by New India Assurance Company for setting aside the Judgment and award passed by the Tribunal.

Both the Appeals were heard together.

2. On the basis of an application filed under Section 166 of the M.V. Act, by the parents and dependent brothers of deceased Kalia alias Kalandi Das, the

aforesaid M.V. Misc. Case was registered before the Tribunal. It was averred by the Petitioners in the said case that on 8-10-1999 at about 8.00 a.m. while deceased Kalia who was working as a mechanic in a scooter garage was coming from his residence, a bus bearing registration number OR-05-C-0123 dashed against him. As a result, Kalia died at the spot. He was aged, twenty years and was earning Rs. 4,500.00 per month. He being a bachelor his parents and dependent brothers had filed the said claim application praying for grant of a compensation of Rs. 3,00,000.00.

3. The owner of the offending bus did not contest the case and he was set ex parte. The New India Assurance Company filed its written statement baldly denying the averments of the Petitioners. On the basis of the pleadings of the parties, the Tribunal framed four issues for adjudicating the case. To substantiate their case, the Petitioners got three witnesses examined on their behalf besides exhibiting as many as eleven documents, while the Insurance Company did not get any witness examined on its behalf nor did exhibit any document to disprove the averments of the Petitioners.

4. After a threadbare discussion of the pral and documentary evidence, the Tribunal has awarded a compensation of Rs. 1,25,000.00 with interest thereon at the rate of 9% per annum from the date of the claim application, i.e.14-10-1999 besides a cost of Rs. 500.00 and has directed the Assurance Company to pay the-same.

5. The Petitioners before the Tribunal have assailed the Judgment on the ground that the award of compensation has been grossly low and while the monthly income of the deceased was Rs. 4,500.00, the Tribunal erroneously holding it to be Rs. 1,200.00 only, has assessed the compensation. In course of hearing, it was further submitted by the learned Counsel for the Petitioners that Tribunal also acted illegally in applying a multiplier as low as '13' while the correct multiplier would have been '16' in assessing the compensation.

According to the Insurance Company, the impugned Judgment is not sustainable on the grounds that the driver of the offending bus having not possessed a valid driving licence it is not liable to pay any compensation at all and rather the owner of the offending bus is liable to pay the same and that no documents were produced before the Tribunal with regard to the age of the deceased and his income as also the age of his parents.

4.(Sic) After hearing the learned Counsel for both sides and perusing the materials on record, this Court finds that the oral evidence reveals that the deceased was a scooter mechanic. Though strictly he could not be said to be a skilled labourer, having no trade training, yet according to the Minimum Wages Act, his income could he at least Rs. 1,500.00 per month. That apart, considering the age of the pare-Us of the deceased, the correct multiplier '10' be applied for calculating the compensation would have been '16' and a multiplier of '13' as applied by the Tribunal was not correct. Considering all these aspects and in a spirit of Lok Adalat, this Court feels that an amount of Rs. 1,50,000.00 instead of Rs. 1,25,000.00 with interest at the rate of 6% per annum instead of 9% from the date of the claim application would be just and adequate compensation to the Petitioners, and orders accordingly. In view of the ratio of the decision of the Supreme Court in the case of New India Assurance Co. Ltd. Shimal v. Kamla reported in : [2001]2SCR797 , as also the provisions of Section 149 M.V. Act, that not possessing a valid driving licence by the driver of the offending bus being a breach of conditions of the insurance policy, for that the poor claimant is not to suffer and it is the duty of the insurance company to first pay the compensation and then realize the said amount from the owner of the offending vehicle, this Court directs the New India Assurance Company to deposit the entire amount as per this Judgment before the Tribunal within six weeks hence and grants liberty to the said Insurance Company to realize the amount from the owner of the offending vehicle. After the amount is deposited, the Tribunal shall forthwith disburse the same with proportionately apportioning the same in consonance with the stipulations made in the impugned Judgment.

The statutory deposit made before this Court with interest accused thereon by a crossed-cheque/draft on a proper application being made enclosing the receipt showing deposit before the Tribunal as directed above.

With the aforesaid direction and modification of the award of the Tribunal, both the appeals are disposed of.

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