

Smt. Sunder Bai and Another Vs. Loop Singh and Others

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Court : Chhattisgarh

Decided On : Jun-28-2011

Judge : The Honourable Chief Justice Mr. Rejeev Gupta & Rangnath Chandrakar

Appeal No. : Misc. Appeal (C) No. 1056 of 2008

Appellant : Smt. Sunder Bai and Another

Respondent : Loop Singh and Others

Advocate for Def. : Shri. B.N. Nande

Advocate for Pet/Ap. : Shri. Vimlesh Bajpai

Judgement :

RAJEEV GUPTA, C.J.

1. This is claimants' appeal for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Bemetara, district Durg (for short 'the Tribunal') vide award dated 11-1-2008, passed in Claim Case No.18/2007.

2. As against the consolidated compensation of Rs.6,75,000/- claimed by the appellants/claimants by filing a claim petition under S. 166 of the Motor Vehicles Act for the injuries sustained by claimants Smt. Sunder Bai and Narottam and for the death of their minor daughter Khusboo, aged about 1 years in the motor

accident on 12-4-2007, the Tribunal awarded Rs.31,500/- for the death of the claimants' daughter Khusboo; Rs. 22,300/- for the injuries sustained by claimant Smt. Sunder Bai; and Rs.7,000/- for the injuries sustained by claimant Narottam, as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

3. The Tribunal on a close scrutiny of the entire evidence led before it held that claimants Smt. Sunder Bai and Narottam sustained injuries in the motor accident on 12-4-2007; the claimants' daughter Khusboo died on account of the injuries sustained by her in the same motor accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Tractor bearing registration No. C.G. 08 C6845; as the above offending vehicle Tractor on the date of the accident was insured with the National Insurance Company Limited and the Insurance Company could not establish any breach of the policy conditions, the Insurance Company was liable to pay compensation to the claimants.

4. As the respondents have not filed any appeal against the award, the above findings recorded by the Tribunal have now attained finality.

5. The Tribunal considering the number and nature of the injuries proved to have been sustained by the claimants in the motor accident; the amount proved to have been spent on the treatment; and the fact that the claimants' daughter Khusboo was aged about 1 years only, awarded Rs. 22,300/- to claimant Smt. Sunder Bai; Rs. 7,000/- to claimant Narottam; and Rs. 31,500/- to the claimants for the death of their minor daughter Khusbhoo, as compensation. The Tribunal further directed payment of interest on the above amounts of compensation of Rs. 22,300/-; Rs. 7,000/-; and Rs. 31,500/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

6. Shri Vimlesh Bajpai, learned counsel for the appellants vehemently argued that the Tribunal has erred in awarding low compensation of Rs. 31,500/- only for the death of the claimants' daughter Khusbhoo; Rs. 22,300/- for the injuries sustained by claimant Smt. Sunder Bai; and Rs. 7,000/- for the injuries sustained by claimant Narottam.

7. Shri B.N. Nande, learned counsel for respondent No.3, National Insurance Company Limited, the insurer of the offending vehicle Tractor, on the other hand supported the award and contended that the amounts of compensation awarded by the Tribunal cannot be termed as inadequate so as to warrant enhancement in this appeal.

8. So far as the compensation of Rs. 22,300/- and Rs. 7,000/- awarded by the Tribunal for the injuries sustained by claimants Smt. Sunder Bai and Narottam are concerned, the claimants for the reasons best known to them did not examine any doctor before the Tribunal for establishing the number and nature of the injuries said to have been sustained by the claimants in the motor accident and the fact that those injuries resulted in any permanent disability.

9. The question whether the medical certificate produced by the claimant before the Tribunal without examining the Doctor who issued the certificate can be relied upon as substantive evidence for the assessment of the compensation came up for consideration before the Apex Court in the case of A.P.S.R.T.C. v. P. Thirupal Reddy, reported in (2005) 12 SCC 189, wherein it was observed in para 6 as under:

“6. After hearing learned counsel for the respondent-claimant who made an attempt to support the order of the High Court, we find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy and enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that Dr. Sudhakar Reddy’s medical certificate was rejected by the Tribunal for non-examination of the doctor. The Tribunal has determined the physical disability at 15 per cent, on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal, set aside the impugned order and restore the award of the Claims Tribunal. The respondent-claimant is allowed to withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn.”

10. The Apex Court in a recent dictum in the case of Rajesh Kumar alias Raju v. Yudhvir Singh, reported in (2008) 7 SCC 305: (AIR 2008 SC 2396), reiterated the same view with the following observations in para 11:

“11. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen’s Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raise din regard to the applicability of the Workmen’s compensation Act which, in our opinion, ex facie has no application, the same in our opinion, cannot be permitted to be raised for the first time.”

11. The medical certificate produced by the claimants before the Tribunal without examining the Doctors who had issued those certificates, in view of the above quoted dicta of the Apex Court in the case of A.P.S.R.T.C. v. P. Thirupal Reddy (supra) and Rajesh Kumar alias Raju v. Yudhvir Singh and another (supra), cannot be taken into consideration for enhancement of the compensation in the case.

12. We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal for the injuries sustained by claimants Smt. Sunder Bai and Narottam.

13. So far as the compensation of Rs. 31,500/- awarded by the Tribunal for the death of the claimants’ minor daughter Khusboo, aged about 1 years is concerned, the Tribunal has certainly lost sight of the fact that under the provisions of the Motor Vehicles Act, 1988, minimum amount awardable as compensation for the death in the motor accident is Rs. 50,000/-. The Tribunal, therefore, was legally bound to award at least Rs.50,000/- as compensation to the claimants for the

death of their daughter Khusbhoo in the motor accident.

14. We, therefore, deem it proper to enhance the amount of compensation by Rs.20,000/- inclusive of interest component on the enhanced amount of compensation.

15. The appeal filed by the appellants/claimants for enhancement of the compensation, therefore, is allowed in part. While maintaining the amounts of compensation of Rs. 22,300/- and Rs. 7,000/- awarded by the Tribunal for the injuries sustained by claimants Smt. Sunder Bai and Narottam in the motor accident, the claimants are awarded further sum of Rs. 20,000/- inclusive of interest component on the enhanced amount of compensation in addition to the sum of Rs. 31,500/- awarded by the Tribunal for the death of their minor daughter Khusboo in the motor accident.

16. Respondent No.3 the National Insurance Company Limited is granted three months' time for depositing the total sum of Rs. 20,000/- before the concerning Claims Tribunal.

17. No order as to costs.

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