

**Jitendra and Others Vs. Jitendra and Others**

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**Court :** Chhattisgarh

**Decided On :** Mar-11-2011

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

**Appeal No. :** Misc Appeal C No 149 of 2006

**Appellant :** Jitendra and Others

**Respondent :** Jitendra and Others

**Advocate for Def. :** Shri. A.K. Athaley, Shri. Vishnu Koshta

**Advocate for Pet/Ap. :** Shri. Vikas Pradhan

**Judgement :**

(MISC APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT 1988)

RAJEEV GUPTA, C.J.

1. This is claimants' appeal for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Dhamtari, district Raipur (for short 'the Tribunal') vide award dated 09.03.2006, passed in Claim Case No.518/2004.

2) As against the compensation of Rs.23,50,000/- claimed by the appellants/ claimants, unfortunate widow and minor children of deceased Bhuneshwar Sahu, by filing a claim petition under Section 166 of the Motor Vehicles Act, for his death in the motor accident on 15.05.2004, the Tribunal awarded a total sum of Rs.1,70,000/- as compensation to the claimants along with interest @ 6% per annum in the event of the insurer's failure to deposit the amount of compensation within 30 days of the passing of the award.

3) The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Bhuneshwar Sahu died on account of the injuries sustained by him in the motor accident on 15.05.2004; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Bus bearing registration No.C.G.05/ZA-0114; as the above offending vehicle Bus on the date of the accident was insured with the Oriental 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 assessed the income of the deceased at Rs.15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act. By deducting 1/3rd of Rs.15,000/- towards the personal expenses of the deceased, the claimants' dependency was assessed at Rs.10,000/- per annum. By multiplying the annual dependency of Rs.10,000/- with the multiplier of 15, the compensation was worked out to Rs.1,50,000/-. By awarding further sum of Rs.20,000/- under other heads, the Tribunal awarded a total sum of Rs.1,70,000/- as compensation to the claimants for the death of deceased Bhuneshwar Sahu in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs.1,70,000/- @ 6% per annum in the event of the insurer's failure to deposit the amount of compensation within 30 days of the passing of the award.

6) Shri Awadh Tripathi and Shri Vikas Pradhan, 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; and in awarding low compensation of Rs.1,70,000/- only.

7) Shri A.K. Athaley, learned counsel for respondent No.3, the Oriental Insurance Company Limited, on the other hand, supported the award and contended that the compensation of Rs.1,70,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

8) Shri Vishnu Koshta, learned counsel for respondents No.1 and 2, the driver and owner of the offending vehicle Bus, also supported the award.

9) In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

10) Now we shall examine as to whether the compensation of Rs.1,70,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

11) True, the claimants pleaded that deceased Bhuneshwar Sahu used to earn Rs.200-250/- per day by selling vegetables, no reliable and clinching evidence was led by the claimants before the Tribunal in that behalf. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the claimants' evidence about the income of the deceased.

12) Nevertheless, the income of the deceased assessed by the Tribunal at Rs.15,000/- per annum in the year 2004 is certainly on the lower side and requires reconsideration.

13) Considering that deceased Bhuneshwar Sahu, on the date of the accident, was aged about 40-42 years, we are of the opinion that he could have easily earned Rs.65-75/- per day in the year 2004 even by working as an unskilled labour. We, therefore, propose to recompute the compensation taking the

income of the deceased at Rs.2,000/- per month and Rs.24,000/- per annum.

14) By deducting the usual 1/3rd of Rs.24,000/- towards the personal expenses of the deceased, the claimants' dependency is assessed at Rs.16,000/- per annum.

15) Considering that deceased Bhuneshwar Sahu was aged about 40-42 years, we are of the opinion that multiplier of 14 would be appropriate in the present case in view of the dictum of the Apex Court in the case of Sarla Verma (Smt) and Others Versus Delhi Transport Corporation and another, reported in (2009) 6 SCC 121, wherein multiplier of 14 has been prescribed for the age group between 41-45 years.

16) By multiplying the annual dependency of Rs.16,000/- with the multiplier of 14 the compensation works out to Rs.2,24,000/-. The claimants are further entitled to receive Rs.5,000/- towards funeral expenses; Rs.5,000/- for loss of estate; and Rs.5,000/- for loss of consortium to the widow. The claimants, thus, become entitled to receive a total sum of Rs.2,39,000/- as compensation for the death of deceased Bhuneshwar Sahu in the motor accident.

17) Learned counsel for the parties submitted that with a view to avoid any possible dispute between the parties before the Tribunal about the period for which the claimants are entitled to receive interest on the enhanced amount of compensation, the amount of interest on the enhanced amount of compensation may be quantified in this appeal itself.

18) Considering all the relevant aspects of the matter, including the delay in disposal of the claim petition, and the present appeal and the fact that the Insurance Company alone is not to be blamed for the entire delay in the matter, we quantify the amount of interest on the enhanced amount of compensation of Rs.69,000/- at Rs.6,000/-.

19) For the foregoing reasons, the appeal filed by the appellants/ claimants for enhancement of the compensation is allowed in part. The compensation of Rs.1,70,000/- awarded by the Tribunal is enhanced to Rs.2,39,000/- with further

quantified amount of interest of Rs.6,000/- on the enhanced amount of compensation of Rs.69,000/-.

20) Respondent No.3 the Oriental Insurance Company Limited is granted three months' time for depositing the total sum of Rs.75,000/- (Rs.69,000/- towards enhanced amount of compensation + Rs.6,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs.69,000/-) before the concerning Claims Tribunal.

21) No order as to costs.

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