

Birbal Ram and Others Vs. Hemant Kumar and Others

Birbal Ram and Others Vs. Hemant Kumar and Others

SooperKanoon Citation : sooperkanoon.com/952265

Court : Chhattisgarh

Decided On : Apr-18-2011

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

Appeal No. : Misc Appeal No 848 of 2006

Appellant : Birbal Ram and Others

Respondent : Hemant Kumar and Others

Advocate for Def. : Shri. P. Dutta

Advocate for Pet/Ap. : Shri. Aditya Kumar

Judgement :

(Miscellaneous Appeal under Section 173 of Motor Vehicles Act)

RAJEEV GUPTA, C.J.

1. The unfortunate parents and younger sister of deceased Ganesh Ram are the appellants before us in this appeal for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Dhamtari, district Raipur (for short 'the Tribunal') vide award dated 19.04.2006, passed in Claim Case No.522/2004.

2) As against the compensation of Rs.18,50,000/-, claimed by the appellants/claimants, unfortunate parents and younger sister of deceased Ganesh Ram, by filing a claim petition under Section 166 of the Motor Vehicles Act, for his death in the motor accident on 03.06.2004, the Tribunal awarded a total sum of Rs.1,70,000/- as compensation along with interest @ 6% per annum in the event of 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 Ganesh Ram died on account of the injuries sustained by him in the motor accident on 03.06.2004; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Metador bearing registration No.CG07-ZB/0236; as the above offending vehicle Metador 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 the 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 Vehicle 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 Ganesh Ram 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 P.P. Sahu and Shri Aditya Kumar, 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 Sudhir Agrawal and Shri P. Dutta, learned counsel for respondent No.3, the Oriental Insurance Company Limited, the insurer of the offending vehicle Metador, 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) 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.

9) 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.

10) True, the claimants pleaded that deceased Ganesh Ram used to earn Rs.100/- per day as labour/coolie, the Tribunal assessed his income 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.

11) Section 163-A of the Act where-under the Second Schedule was introduced in the year 1994 reads as follows:

"[163 A. Special provisions as to payment of compensation on structured formula basis - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation - For the purposes of this sub- section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act,

1923 (8 of 1923).

(2) In any claim for compensation under Sub - Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

12) The above quoted Sub - Section (3) of Section 163 - A of the Act mandated the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

13) As the Central Government has failed in amending the Second Schedule as provided in Sub - Section (3) of Section 163 - A of the Act, the Courts / Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

14) Now, reverting to the present case, the unfortunate accident wherein deceased Ganesh Ram lost his life took place in the year 2004. If the increase in the prices of essential commodities and the cost of living between the year 1994 and 2004 are taken into consideration, the notional income of Rs.15,000/- prescribed in the Second Schedule in the year 1994 would certainly come to Rs.36,000/- in the year 2004. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs.36,000/- per annum.

15) Considering that deceased Ganesh Ram was unmarried on the date of the accident, we deem it proper to deduct 50% of Rs.36,000/- towards the personal expenses of the deceased in view of the dictum of the Apex Court in the case of Syed Basheer Ahamed and others Vs Mohammed Jameel and another reported in (2009) 2 Supreme Court Cases 225. The claimants' dependency, therefore, is

assessed at Rs.18,000/- per annum.

16) As the claimants are parents and younger sister of the deceased, the appropriate multiplier in the case would be 10 in view of the dictum of the Apex Court in the case of Municipal Corporation of Greater Bombay Vs Laxman Iyer and another, reported in (2003) 8 SCC-731, wherein it was held that in those cases where the claimants are parents of the deceased, the multiplier should never exceed 10.

17) By multiplying the annual dependency of Rs.18,000/- with the multiplier of 10, the compensation works out to Rs.1,80,000/-. The claimants are further entitled to receive Rs.5,000/- towards funeral expenses; and Rs.5,000/- for loss of estate. The claimants, thus, become entitled to receive a total sum of Rs.1,90,000/- as compensation for the death of deceased Ganesh Ram in the motor accident.

18) The claimants are awarded further sum of Rs.2,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs.20,000/-.

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.1,90,000/- with further quantified amount of interest of Rs.2,000/- on the enhanced amount of compensation of Rs.20,000/-.

20) Respondent No.3 the Oriental Insurance Company Limited is granted three months' time for depositing the total sum of Rs.22,000/- (Rs.20,000/- towards enhanced amount of compensation + Rs.2,000/- towards quantified amount of interest on the enhanced amount of compensation of Rs.20,000/-) before the concerning Claims Tribunal.

21) No order as to costs.