



(31)

A.F.R.

30.11.2012

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI RAJEEV GUPTA, C.J.
HON'BLE SHRI RANGNATH CHANDRAKAR, J

Misc. Appeal (C) No.101 of 2011

Appellants
Claimants

- 1 Dinesh Agrawal, s/o Narayan Das Agrawal, age 45 years
- 2 Smt Gayatri Devi, W/o Dinesh Agrawal, age 45 years

Versus

Respondents

- 1 Omprakash Singh, s/o Harinandan Singh, age 35 years, r/o Sunday Baar Kusro, Thana Kusro, Distt Bokaro (Jharkhand) (Non Applicant No.1 Driver)
- 2 Koushal Kumar Singh, S/o Ramvijay Singh, r/o Kodatarai, Distt Raigarh (CG) (Non Applicant No.2 Owner)
- 3 Bajaj Alliance General Insurance Company Ltd., through In-charge Officer, Bajaj Alliance General Insurance Company Ltd., Shiv Mohan Bhawan Pandri, Raipur, Distt Raipur (CG) (Non Applicant No.3)
- 4 Md Sarwar Hussain, S/o Md Habib, r/o Moudhapara, Thana Moudhapara, Raipur, Distt Raipur (Non Applicant No. 4 Driver)
- 5 Shekh Shubhan, s/o Shekh Jabbar, Pharukh Manzil Moudhapara, Raipur (Non Applicant No.5 Owner)
- 6 The New India Insurance Co Ltd., Branch Office 2nd floor, RDA Building, Bajrang Market, Raipur (CG) (Non Applicant No.6)

**Miscellaneous Appeal under Section 173 of
Motor Vehicles Act**

Present : Shri Sanjay Agrawal, counsel for the appellants.
Shri SS Rajput, counsel for respondent No.3.
Shri Ashish Beck, counsel for respondent No.6.

ORDER

(30th November, 2011)

The following order of the Court was passed by
Rajeev Gupta, C.J.

This is claimants' appeal for enhancement of the compensation awarded by the 10th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Tribunal') vide award dated 13.10.2010, passed in Claim Case No.15/2010.

2) As against the compensation of Rs.13,00,000/- claimed by the claimants, unfortunate parents of deceased Chandan Kumar Agrawal by filing a claim petition under Section 166 of the Motor Vehicles Act for his death on 15.07.2008 on account of the injuries sustained by him in the motor accident on 02.07.2008, the Tribunal awarded a total sum of Rs.1,67,000/- 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 the claimants' son Chandan Kumar Agrawal died on 15.07.2008 on account of the injuries sustained by him in the motor accident on 02.07.2008; the accident occurred due to the

negligence of both the drivers of Minibus bearing registration No.CG-04 E/0499 in which deceased Chandan Kumar Agrawal was traveling and of the Truck bearing registration No.CG-13 A/7486; negligence of the drivers of the above Minibus and Truck was to the extent of 50% each; as the above Minibus and Truck on the date of the accident were insured with the New India Insurance Company Limited and the Bajaj Alliance General Insurance Company Limited respectively and the insurance companies could not establish any breach of the policy conditions, both the insurance companies were liable to pay 50% each of 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 Vehicles Act. By deducting 50% of Rs.15,000/- towards the personal expenses of the deceased, the claimants' dependency was assessed at Rs.7,500/- per annum. By multiplying the annual dependency of Rs.7,500/- with the multiplier of 10, the compensation was worked out to Rs.75,000/-. By awarding further sum of Rs.80,000/- towards medical expenses and Rs.12,000/- under other heads, the Tribunal awarded a total sum of Rs.1,67,000/- as compensation to the claimants for the death of their son Chandan Kumar Agrawal in the motor accident. The

Tribunal further directed payment of interest on the above amount of compensation of Rs.1,67,000/- @ 6% per annum from the date of the filing of the claim petition till the date of actual payment. AS the insurer of the Minibus and the Truck were held liable to pay 50% of the compensation assessed, the Tribunal directed both the insurance companies to pay Rs.83,500/- each to the claimants along with interest due thereon @ 6% per annum.

6) Shri Sanjay Agrawal, learned counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs.15,000/- per annum only; and in awarding low compensation of Rs.1,67,000/- only.

7) Shri SS Rajput, learned counsel for respondent No.3 the Bajaj Allinace General Insurance Company Limited, the insurer of the Truck and Shri Ashish Beck, learned counsel for respondent No.6 the New India Insurance Company Limited, the insurer of the Minibus on the other hand supported the award and contended that the compensation of Rs.1,67,000/- 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.

7

9) Now, we shall examine as to whether the compensation of Rs.1,67,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

10) True, the claimants pleaded that their son Chandan Kumar Agrawal used to earn Rs.6,000/- per month by working as Supervisor in a Private Company, no cogent and reliable evidence was led before the Tribunal for establishing the above occupation of the deceased and his income to the extent of Rs.6,000/- per month. 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.

11) Nevertheless, the income of the deceased assessed by the Tribunal at Rs.15,000/- per annum in the year 2008 is certainly on the lower side and requires re-consideration.

12) The claimants pleaded income of the deceased at Rs.6,000/- per month and 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.

13) 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.”

14) 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.

15) 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.

16) Now, reverting to the present case, the unfortunate accident wherein the claimants' son Chandan Kumar Agrawal lost his life took place in the year 2008. If the increase in the prices of essential commodities and the cost of living between the year 1994 and the year 2008 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 2008. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs.36,000/- per annum.

17) As deceased Chandan Kumar Agrawal on the date of the accident was unmarried, we deem it proper to deduct 50% of Rs.36,000/- towards the personal expenses of the deceased in view of the dicta of the Apex Court in the cases of **Syed Basheer Ahamed and others Vs Mohammed Jameel and another** reported in (2009) 2 Supreme Court Cases 225 and **Sarla Verma (Smt) and others Versus Delhi Transport Corporation and another** reported in (2009) 6 Supreme Court Cases 121. The claimants' dependency, therefore, is assessed at Rs.18,000/- per annum by deducting 50% of Rs.36,000/- towards the personal expenses of the deceased.

18) As the claimants are parents of the deceased, in our opinion, multiplier of 10 would be appropriate in the present case 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.

19) By multiplying the annual dependency of Rs.18,000/- with the multiplier of 10, the compensation works out to Rs.1,80,000/-. By adding further sum of Rs.80,000/- awarded by the Tribunal towards medical expenses; Rs.5,000/- towards funeral expenses and Rs.5,000/- for loss of estate, the claimants become entitled to receive a total sum of Rs.2,70,000/- as compensation for the death of their son Chandan Kumar Agrawal in the motor accident.

20) Learned counsel for the parties submitted that with a view to avoid any possible dispute between the parties 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.

21) 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.1,03,000/- at Rs.11,000/-.

22) For the foregoing reasons, the appeal filed by the appellants/claimants for enhancement of the compensation is allowed in part. The compensation of Rs.1,67,000/- awarded by the Tribunal is enhanced to Rs.2,70,000/- with further quantified

amount of interest of Rs.11,000/- on the enhanced amount of compensation of Rs.1,03,000/-.

23) As respondent No.3 the Bajaj Allinace General Insurance Company Limited, the insurer of the Truck and respondent No.6 the New India Insurance Company Limited, the insurer of the Minibus have been held liable to pay 50% of the compensation assessed/awarded, their liability, now is to deposit Rs.57,000/- (Rupees fifty-seven thousand only) (Rs.51,500/- towards enhanced amount of compensation + Rs.5,500/- towards quantified amount of interest on the enhanced amount of compensation of Rs.51,500/-) before the concerning Claims Tribunal. Both the insurance Companies are granted three months' time for depositing the sum of Rs.57,000/- (Rupees fifty-seven thousand only) each.

24) No order as to costs.

Sd/-
Chief Justice

Sd/-
R.N. Chandrakar
Judge