

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 385 of 2018

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Shanti Devi Appellant

Versus

M/s Bajaj Allianz General Insurance
Company Limited & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Appellant : Mrs. Lokeshwari Banerjee, Advocate.
Mr. Satish Kumar, Advocate.

For the Respondent No. 1 : Mr. S.J. Roy, Advocate.

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06/17.04.2021.

Heard, learned counsel, Mrs. Lokeshwari Banerjee assisted by learned counsel for the appellant, Mr. Satish Kumar and learned counsel for the respondent no. 1, Mr. S.J. Roy.

Learned counsel for the appellant has submitted that the claimant namely, Shanti Devi is the appellant before this Court and she has preferred this appeal for enhancement of award dated 31.03.2018 passed by learned District Judge-1st-cum-M.A.C.T., Bokaro in Motor Accident Claim Case No.68/2013, whereby the claimant has been awarded compensation for the dependents i.e. herself and three sons of the deceased, Situ Yadav, to the tune of Rs.4,07,200/- after deducting Rs. 50,000/-, which has already been paid to the claimant under Section 140 of Motor Vehicles Act alongwith interest @ 7% per annum from the date of filing of the claim application. However, if the amount is not paid within one month from the date of the order, the Insurance Company shall be liable to pay interest @ 8 % per annum on the compensation amount.

Learned counsel for the appellant has submitted that deceased Situ Yadav was returning to his house on his bicycle on 26.12.2011 and when he reached near Village – Naiya, the offending vehicle i.e. Tata Magic Goods Carrier vehicle bearing registration No. JH-09P-1582 dashed him causing serious injury. Thereafter, he was admitted to Bokaro General Hospital and was treated till his last breath on 30.12.2011 and FIR has been lodged vide Gomia P.S. Case No.03/2012 dated 03.01.2012 against the driver of the offending vehicle.

Learned counsel for the appellant has submitted that vehicle was duly insured before M/s Bajaj Allianz General Insurance Company Limited vide Policy No. OG-12-9995-1083-00024521 for the period from 28.10.2011 to 27.10.2012, as such, vehicle was duly insured at the relevant time. The Insurance Company has not preferred any appeal against the same impugned award even though the liability has been fastened upon the Insurance Company.

Learned counsel for the appellant has further submitted that the deceased left behind claimant, Shanti Devi and O.P. No.3, Shankar Yadav, O.P. No.4, Chandan Yadav and O.P. No.6, Kanhai Lal Yadav all sons of the deceased, who are dependents upon the deceased, as such, this Court may consider the enhancement of the compensation on the ground that income of the deceased has been wrongly considered by the learned Tribunal and wrong deduction has been made towards personal and living expenses contrary to the judgment passed by Apex Court in the case of *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* reported in (2009) 6 SCC 121 (Para-30) as the number of dependent is four, the deduction ought to have been 1/4th instead of 1/3rd as held by the learned Tribunal.

Learned counsel for the appellant has further submitted that medical expenses to the tune of Rs. 30,000/- incurred in treatment of the deceased has been brought on record as Exhibit-2 i.e. medical bill of the deceased of Bokaro General Hospital, a reputed medical hospital, which has not been considered by the learned Tribunal without any specific reason.

Learned counsel for the appellant has further submitted that interest has been awarded @ 7% per annum instead of 7.5% per annum from the date of filing of the application contrary to the judgment passed by Apex Court in the case of *Dharampal and Sons Vs. U.P. State Road Transport Corporation* reported in 2008 (4) JCR 79 (SC).

Learned counsel for the appellant has submitted that deceased was working a contractual labourer as discussed in paragraph-12 of

the impugned judgment / award before G.B. Enterprises, IEL Gomia, Bokaro though wage slip has been brought on record as Exhibit-1 for the particular month when deceased worked for 20 days i.e. between 21.10.2011 to 20.11.2011 @ Rs. 191.71 per day, though the claimant has claimed the income of the deceased as Rs.10,000/- and apart from that, deceased has agriculture income of Rs.50,000/- per annum.

Learned counsel for the appellant has thus submitted that this Court may consider the compensation to be just and fair compensation and may enhance the same.

Learned counsel, Mr. S.J. Roy, appearing for M/s Bajaj General Insurance Company Limited has opposed the prayer and has submitted that learned Tribunal has reason to believe the income of the deceased for 20 days in view of Exhibit-1 i.e. Wages slip of the deceased.

Learned counsel for the Insurance Company has submitted that the learned Tribunal has considered the interest for 30 days to be @ 7% per annum, but after that interest @ 8% per annum has been awarded, as such, this Court may not interfere with the same.

Considering the rival submission of the parties, looking into facts and circumstances of the case, it appears that deceased Situ Yadav left behind four dependents. The claimants have claimed the income of the deceased to be Rs.10,000/- per month, but the learned Tribunal has considered the income of the deceased as Rs,4,000/- per month on the basis of Exhibit -1, which was wage slip for one month i.e. from 21.10.2011 to 20.11.2011, when the deceased has worked for 20 days only. This Court is conscious of the position that in the case of *Chameli Devi & Others Vs. Jivrail Mian & Others* reported in *2019 (4) TAC 724 (SC)*, the Apex Court has considered the income of a carpenter, in absence of any documentary evidence, to be Rs.5,000/- per month, who lost his life in the year 2001. In the present case, accident is of dated 26.12.2011 and the income of deceased has been shown by Exhibit-1 from 21.10.20211 to 20.11.2011 to the tune of Rs. 191.71 per day for 20 days, it does not

mean that a person was sitting idle for 10 days of a month, he must be earning something for his livelihood as well as for his family constituted at that time of five persons. Accordingly, without going into minute detail, this Court consider the income of the deceased to be Rs. 5,000/- per month as if it is presumed that the deceased was working for 26 days which is multiplied by daily wage @ Rs. 191.71 per day, then the income will come to Rs. 4,984.46.

Under the aforesaid circumstances, this Court consider the income of the deceased to be Rs.5,000/- per month for just and fair compensation in view of the judgment passed by the Apex Court in the case of *Chameli Devi(Supra)*.

So far Exhibit-2 with regard to the medical expenses incurred by the family in treatment of the deceased from 26.12.2011 till 30.12.2011 is concerned, a medical bill of Bokaro General Hospital has been adduced as Exhibit No. 2 owing to Rs.30,000/-, as such, it ought to have been granted by the learned Tribunal as nothing has been stated by the Insurance Company that this bill was forged and fabricated. This Court consider that the same amount is also payable to the claimant.

So far deduction under the personal and living expenses of the deceased is concerned, the learned Tribunal has considered it to be 1/3rd though the family comprises of five persons, the deceased left behind four dependents i.e. wife and three sons, as such, in view of the judgment passed by the Apex Court in the case of *Sarla Verma (Smt.)(Supra) (para-30)*, the deduction ought to have been 1/4th.

So far the interest is concerned, the interest has been granted @ 7% per annum from the date of filing of claim application till one month of the award, failing which the interest has been enhanced @ 8%. This is also been interfered by this Court considering the uniform method adopted by this Court in view of the judgment passed by the Apex Court in the case of *Dharampal and Sons Vs. U.P. State Road Transport Corporation* reported in *2008 (4) JCR 79 (SC)*, as such, the same shall be payable @ 7.5% from the date of filing of the claim application till the date of indemnifying the award.

The aforesaid amount shall be paid after deduction of ad interim compensation of Rs. 50,000/- paid to the claimant under Section 140 of the Motor Vehicles Act.

So, the new calculation shall be as follows:-

Income	Rs. 5,000/- per month
Annual Income	Rs. 5,000/- x 12 = Rs. 60,000/-
10% future prospect Pranay Sethi (Para- 59.4)	Rs. 60,000/- + Rs. 6,000/- = Rs. 66,000/-
1/4 th deduction towards personal and living expenses Sarla Verma (Para-30)	Rs. 66,000/- x 1/4 = Rs. 16,500/-
Total Income	Rs. 66,000/- - Rs. 16,500/- = Rs. 49,500/-
Multiplier of 11 (as the deceased was in the age group of 51-55 years) Sarla Verma (Para-42)	Rs. 49,500/- x 11 = Rs. 5,44,500/-
Conventional Head Pranay Sethi (Para-59.8)	Rs. 70,000/-
Medical Expenses	Rs. 30,000/-
Total Compensation Amount	Rs. 5,44,500/- + Rs. 70,000/- + Rs. 30,000/- = Rs. 6,44,500/-

Rs. 50,000/-, which has already been paid by the Insurance Company, shall be deducted from the compensation amount of Rs. 6,44,500/-, then it comes to Rs. 5,94,500/-. The same shall be paid along with interest @ 7.5% per annum in view of the judgment passed by the Apex Court in the case of *Dharmpal & Sons (Supra)* from the date of filing of the claim application in view of Section 171 of the Motor Vehicles Act till the date of actual indemnifying the award. Since the occurrence is of the year 2011, the Insurance Company shall indemnify the same within a reasonable time.

Accordingly, the Miscellaneous Appeal is allowed.

(Kailash Prasad Deo, J.)

Sunil/-