

(2015) 09 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 300 and 284/2008

Aditya Kumar Mangal and Others

APPELLANT

Vs

Soma and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0124

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Tribhuvan Gupta, for the Appellant; M.P. Goswami and Sajnay Raj Paliwal, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Both these present Misc. Appeals have been filed under 173 of the Motor Vehicles Act, 1988 by the appellants-claimants against the common judgment and Award dated 25th March, 2006 passed by the learned Judge, Motor Accidents Claims Tribunal, Udaipur respectively in Claim Case Nos. 48/2005 (1053/2004) "Aditya Kumar & Ors. v. Soma & Ors." and 225/2005 (78/2005) "Bajrang Lal Sharma & Ors. v. Soma & Ors." by which, the claimants of both the claim cases were awarded compensation respectively in the sum of Rs. 7,30,000/- and Rs. 5,40,000/- for the death of Dr. Giriraj Prasad and Vinod Kumar Sharma, a Nursing Staff. The present Misc. Appeals have been filed by the dependents of both the deceased seeking enhancement in the amount of compensation, as awarded by the Tribunal.

2. The relevant portion of the findings of the learned Tribunal is quoted herein below for ready reference:--

3. Briefly put the background facts of the case are as follows : As both the above-mentioned claim petitions arise out of the same accident, it is relevant to mention here that on 01.10.2004 around 1:25 a.m. in the night when the persons namely, Dr. Giriraj Prasad, Vinod Kumar Sharma and Piyush Tiwari were

coming from Eklingapura to Udaipur under the jurisdiction of the Police Station Pratapnagar (Udaipur) in a Maruti Wagon-R then, a truck bearing registration number R-1-A.T.-6680 which was rashly and negligently driven by the respondent No. 1-Soma S/o. Dhanna Koli Thakur hit the car from the wrong side and because of this accident, the car in question was totally destroyed from the front side and as a result of the said accident, Dr. Giriraj Prasad and Vinod Kumar Sharma died.

4. The dependents of the deceased filed the claim petitions aforesaid, which were decided by the learned Tribunal, after framing of the relevant issues and after taking necessary evidence. The learned Tribunal has awarded respectively Rs. 7,30,000/- in Claim Case No. 48/2005 to the dependents of Dr. Giriraj Prasad and Rs. 5,40,000/- in Claim Case No. 225/2005 to the dependents of Vinod Kumar Sharma. The deceased Dr. Giriraj Prasad (Mangal) was a qualified doctor having the degree of MBBS and was 25 to 30 years in age at the time of accident. The deceased was appointed as Doctor on the contract basis just before one year of the accident. Similarly, the deceased Vinod Kumar Sharma was a qualified Nursing Staff and the deceased was appointed as Nurse Gr. II vide Government of Rajasthan in its Medical Department Order dated 10.01.2002 and he was also 25 to 30 years in age at the time of accident.

5. The learned Tribunal has held liable for the accident in question, the truck driver to the extent of two-third extent and at the same, the Maruti Wagon-R driver - Vinod Kumar Sharma liable to the extent of one-third and, therefore, as the owner of the Wagon-R and its insurer was not made the parties to the claim petition, the claimants were held entitled to only two-third of the total compensation and thus, while calculating total compensation of Rs. 10,88,000/- in the case of Dr. Giriraj Prasad, the Tribunal had allowed only Rs. 7,30,000/-; similarly, in the case of Vinod Kumar Sharma, the total compensation of Rs. 8,09,600/- but allowed only Rs. 5,40,000/- towards the amount of compensation to the claimants. Hence, both these Misc. Appeals seeking enhancement in the amount of compensation, as awarded by the learned Tribunal.

6. The learned counsel Mr. Tribhuvan Gupta appearing for the claimants submitted that the Tribunal below has erred in not allowing adequate compensation to the claimants. The learned counsel also submitted that the Tribunal below has not considered the aspect of future prospects of increase in the income despite the fact that both the deceased were well qualified technical personnels, one was a qualified doctor and another was a qualified Nursing Staff, who unfortunately died at very young age. The learned counsel prayed that looking to the latest judgments of the Hon'ble Supreme Court in the cases of motor accidents cases, the amount of compensation as awarded by the learned Tribunal below may kindly be suitably enhanced.

7. The learned counsel Mr. M.P. Goswami on behalf of Mr. Anil Bachchawat appearing for the respondent No. 3 - The New India Insurance Company Ltd. supported the impugned judgment and award but does not seriously oppose the

prayer for some enhancement in the amount of compensation.

8. The findings of the Tribunal below regarding contributory negligence are not disturbed and are, hereby, upheld. Upon perusal of the site map, it is noticed that the accident in question occurred in the middle of the road, therefore, the findings in respect of one-third negligence on the part of the driver of the Maruti Wagon-R being driven by the deceased Vinod Kumar Sharma appears to be correct findings by Tribunal and are upheld.

9. Having heard the learned counsel for the appellants/claimants and the respondents/non-claimants, and considering the facts and circumstances of the case including future prospects of increase in income in view of Hon''ble Supreme Court decision in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it is considered to be a fit case to award a lump sum amount of enhancement in the sum of Rs. 4,00,000/- in the case of CMA No. 300/2008 "Aditya Kumar Mangal & Ors. v. Soma & Ors." and Rs. 3,00,000/- in the case of CMA No. 284/2008 "Bajrang Lal & Ors. v. Soma & Ors." in addition to what has already been awarded by the learned Tribunal. The judgment and award passed by the learned Tribunal dated 25.03.2006 shall stand modified accordingly. The said enhanced sum of Rs. 4,00,000/- and Rs. 3,00,000/- respectively be paid to the respective claimants within a period of three months from today and the same shall also bear the interest @ 9% per annum from the date of filing of the claim petitions till the date of payment. Half of the enhanced amount of the compensation in each case be deposited for 5 years in Fixed Deposit and half of the amount be given by way of cheques to the legal representatives of each of the victim in equal share.

10. Thus, both the Misc. Appeals (CMA No. 300/2008 "Aditya Kumar Mangal & Ors. v. Soma & Ors. and CMA No. 284/2008 "Bajrang Lal & Ors. v. Soma & Ors.") filed by the claimants/appellants are, accordingly, allowed. No costs. A copy of this order be sent to the concerned parties and the Motor Accident Claims Tribunal, Udaipur forthwith.