
(2022) 03 RAJ CK 0080

In the Rajasthan High Court

Case No : S.B. Civil Miscellaneous Appeal No. 2965 Of 2019

Banwari Lal

APPELLANT

Vs

Bhag Chand Prajapat And Others

RESPONDENT

Date of Decision : 05-03-2022

Acts Referred:

Citation : (2022) 03 RAJ CK 0080

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Dinesh Kumar Garg, Chanderdeep Singh Jodha, Ravindra Kumar Paliwal

Final Decision : Allowed

Judgement

Birendra Kumar, J

1. The appellant is not satisfied with the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Karauli in Claim Case No.15/2018 vide award dated 29.03.2019. The Tribunal has awarded Rs.8,78,109/- along with interest of 8% from the date of application against claim of Rs.47,09,000/-.

2. The appellant was driving his Tempo on 23.08.2017 at about 7 PM near Gulab Bagh, Karauli. A Tanker bearing registration No.RJ-47/GA-0612 came rashly and negligently and hit the Tempo as a result whereof the appellant got serious injuries and during course of treatment, his right leg was amputated. One more person in the Tempo namely Chiranji Lal died at the spot due to the accident.

3. The accident and the insurance of the offending Tanker with respondent No.2 are established by evidences on record and the same are not challenged in this appeal. The appellant was a Driver, which is established by driving license of the appellant at Ex.131. The certificate of registration of the Tempo in the name of the appellant is Ex.133 and the certificate of permanent disablement i.e. amputation of one of the leg is at Ex.132. The appellant claimed that he was contributing to the family Rs.12,000/- per month by earning from the said Tempo

and after accident and amputation of leg is completely unable to drive the vehicle in future. The appellant further claimed that he was aged about 45 years at the time of accident. The Tribunal accepted the claim of 70% disablement of the appellant and decided following compensation.

4. In absence of proof of income of the appellant Rs.5,382/- per month was taken, which was minimum wages of an unskilled labourer. The Tribunal multiplied Rs.5,382/- with 12 months and again with multiplier of 14 considering the age of the appellant as 45 years. Besides the aforesaid, the Tribunal awarded Rs.2,00,000/- for mental agony and pain and other small amounts relating to medical expenses for minor injuries etc. detailed in the impugned order and in total Rs.8,78,109/-.

5. Mr. Dinesh Kumar Garg, learned counsel for the appellant contends that in Jagdish Vs. Mohan & Ors. reported in (2018) 4 SCC 571, a three Judges Bench of the Hon'ble Supreme Court accepted the claim of the claimant, who was a Carpenter and had claimed income of Rs.6,000/- per month. The Court held that the claim of income of the Carpenter cannot be discarded as being unreasonable or contrary to a realistic assessment of situation on the date of accident. In Jagdish's case (supra), accident had taken place on 24.11.2011. In the case on hand, the accident took place on 23.08.2017. In between the said period, the value of money drastically came down. Moreover, claim of a Driver having valid driving license of income of Rs.400/- per day by plying his own vehicle cannot be termed as exorbitant and unreasonable. Further, no documentary evidence of income of an Auto Driver from his own Auto, is normally possible unless the income is within the taxable range. Oral evidence of the claimant regarding his contribution to the family per month of Rs.12,000/- is already on the record. Therefore, there is no hesitation in accepting the claim of income of the appellant as Rs.12,000/- per month, therefore, yearly loss of income was Rs.1,44,000/-.

6. Learned counsel for the Insurance Company contends that the learned Tribunal has adopted a just multiplicand in absence of any documentary evidence of the income of appellant. Reliance has been placed on the judgment of the Hon'ble Supreme Court in Kirti & Anr. Etc. v. Oriental Insurance Company Ltd. disposed of on 05.01.2021.

The Hon'ble Supreme Court has not stated in Kirti's case (supra) in unequivocal terms that in each and every case, in absence of any documentary evidence of income, the daily wagers' income should be taken as multiplicand. Moreover, three Judges Bench judgment of the Hon'ble Supreme Court in Jagdish's case (supra), was not placed before the Hon'ble Bench deciding Kirti's case (supra). In my view, there was no conflict between the two judgments.

7. Since, the appellant suffered amputation of one of the leg, he was unable to perform the vocation of Driver in future. Moreover, he was unable to earn other livelihood easily, therefore, it was a case of 100% disablement.

8. In my view, 75% of the aforesaid income of the appellant would have been

taken as loss of future income. Rs.48,000/-, which is 75% of Rs.1,44,000/- yearly income, requires to be multiplied by multiplier of 11 as date of birth of the appellant in the driving license has been mentioned as 03.02.1967. Therefore, on the date of accident, he was above 50 years of age and for are between 50 to 55 years multiplier of 11 is applicable. Hence, I accept the submission of learned counsel for the Insurance Company that the Tribunal has wrongly applied the multiplier of 14.

9. In para 8 of Jagdish Vs. Mohan & Ors. reported in (2018) 4 SCC 571, the Hon'ble Supreme Court has observed as follows:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together with its amenities;
- (iv) Medical expenses including those that the victim may be required to undertake in future; and
- (v) Loss of expectation of life."

10. In Raj Kumar vs. Ajay Kumar and anr. reported in (2011) 1 SCC 343, the Hon'ble Supreme Court said that when the compensation is awarded by treating loss of future earning capacity to be hundred per cent or anything more than 50 per cent, need to award compensation separately under loss of amenities or loss of expectation of life may disappear. Only a token/nominal amount has to be awarded.

The learned Tribunal has awarded only Rs.11,000/- for twenty days treatment undergone by the appellant as indoor patient and Rs.23,186/- for medical expenses based on vouchers produced by the appellant. In my view, the aforesaid amount is not just compensation considering the nature of disablement suffered by the appellant and nature of treatment meted to him for twenty days. The approach should be humanitarian and not pedantic. In my view, Rs.1,00,000/- is payable under this head.

The amount is just and reasonable and no documentary evidence of expenses is needed when it is established that while undergoing treatment of accident, the appellant lost his one leg to save his future life. Considering the nature of disablement, the appellant would need assistance of some others and other expenses to follow his daily pursuits and under this head Rs.2,00,000/- is payable.

Thus, 'just compensation' would be as follows :-

S.No.

Amount

1

Loss of income

Rs.12,000x12=Rs.1,44,000/-

2

Loss of future income

Rs.9,000x11x12=Rs.11,88,000/-

3

Pains suffering and trauma resulting from the accident

Rs.10,000/-

4

Loss of expectation of life

Rs.10,000/-

5

Medical expenses including those that the victim may be required to undertake in future

Rs.3,00,000/-

6

The inability of the victim to lead a normal life together with its amenities

Rs.1,00,000/-

Total = Rs.17,52,000/-

11. This Court is not inclined to interfere with the interest awarded by the Tribunal. The aforesaid amount shall be payable by the Insurance Company after deducting already paid amount within one month, falling which, 12% would be payable till the date of recovery.

12. The appeal stands allowed to the aforesaid extent.