

(2014) 02 RAJ CK 0049
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 5995/2011

Geeta Devi and Others

APPELLANT

Vs

Jag Mohan and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 02 RAJ CK 0049

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Sandeep Mathur, Advocates for the Appellant; Kamlesh Raniwal, Advocates for the Respondent

Judgement

Nisha Gupta, J.—This appeal Under Section 173 of the Motor Vehicles Act, 1988 against the judgment/award dated 18.6.2008 passed by Judge, MACT, Tonk in MAC No. 161/2007 has been filed for enhancement of compensation.

2. The contention of the appellants is that the deceased was having agricultural income and he was also Sarpanch of village Borkhandi Kalan. It is true that no documentary evidence has been produced hence the compensation has been awarded on notional income. If no income has been proved still the claimant has proved that the deceased was having some income and compensation should be calculated on the basis of minimum wages. Further contention of the appellants is that the deceased was of 52 years of age and no future prospects has been awarded and hence, the compensation should be enhanced suitably.

Per contra the contention of the respondents is that when no income has been proved, the court below was right in calculating the compensation on the ground of notional income and when the deceased was of 52 years of age having no regular income, future prospects could be awarded.

3. Heard the learned counsel for the parties and perused the impugned judgment and award.

4. The case of the claimant was that the deceased was having agricultural income and he was Sarpanch of village Borkhandi Kalan but no documentary evidence has been produced. The appellant has relied upon State of Haryana and Another Vs. Jasbir Kaur and Others, wherein it has been held that in case of agricultural income, normal rule about the deprivation of income is not strictly applicable as the land still remains with the claimants. In spite of this, Rs. 3,000/- was assessed as the income of the deceased. Further reliance has been placed on Laxmi Devi and Others Vs. Mohammad Tabbar and Another, where also income of unskilled labour has been calculated as Rs. 100/- per day and the contention of the appellants is that the income of the deceased should be calculated as Rs. 3,000/-.

5. The contention of the respondents is that in the year 2007 the minimum wages of unskilled labour was Rs. 73 per day. Taking note of the minimum wages prevalent at the relevant time, the income of the deceased be assessed as Rs. 2100/-.

6. Admittedly, the deceased was having his wife as legal heir and two major sons, hence, he was only one dependent as the sons are legal heirs but not dependent as they are major and reliance has rightly been placed on Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, . Hence, for personal expenses 1/2 should have been deducted.

7. Further contention of the appellants is that future prospects should be awarded. Reliance has been placed on Rajesh and Others Vs. Rajbir Singh and Others, where it has been held that victims between the age of 50-60 years, 50% additional future prospects should be added.

Per contra the learned counsel for the respondents has relied upon Reshma Kumari and Others Vs. Madan Mohan and Another, wherein it has been held that if the deceased is self-employed or not on fixed salary, the actual income at the time of death without any addition to income for future prospects should be counted.

8. In view of the above, there is no justification to allow any future prospects.

9. Hence, in the light of the above, the impugned award needs no modification in the terms the claimants are entitled for income of Rs. 2100/- per month and amount of compensation comes to $2100 \times 12 \times 13 = 3,27,600$ - 1/2 deduction : 1,63,800/- where the Tribunal has already awarded 1,95,000/- for loss of dependency. No appeal has been filed by the Insurance Company, no interference is needed in spite of the fact that claimants are entitled for lesser compensation.

In view of the above, the appeal is liable to be dismissed and is accordingly dismissed.