(2017) 05 RAJ CK 0159

In the Rajasthan High Court

Case No : 123 of 2002

Geeta Kanwar & ors. APPELLANT

Vs

Sampatlal & ors. RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173, Section 173 - Appeals

Citation : (2017) 05 RAJ CK 0159

Hon'ble Judges : Goverdhan Bardhar

Bench : SINGLE BENCH

Advocate : RS Chundawat, Kishore Ranga, KL Purohit

Judgement

1. The instant civil misc. appeal under Section 173 of the Motor Vehicle Act, 1988 has been preferred by the claimants/appellants for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Rajsamand (for short ''the Tribunal'') vide impugned judgment and award dated 15.10.2001 passed in Claim Case No. 176/2001, whereby compensation in the sum of Rs.3,06,000/- has been awarded in favour of the claimants/appellants.

2. Succinctly stated, the facts of the case are that on 08.03.2001 when deceased Kalyan Singh was going from Kelwa Bus Stand to Chopati on his motor cycle, a Jeep bearing No. RJ- 14-T-1744 being driven by respondent No.1 in a rash and negligent manner, hit the motor cycle, as a result of which, the Kalyan Singh sustained several grievous injury and subsequently during treatment died in Hospital. In the claim petition, it was stated that on account of rash and negligent driving on the part of the driver of the offending vehicle accident took place.

3. No reply was filed on behalf of the respondent No.1. Respondent No.2 filed his reply stating that the accident took place due to negligence of deceased Kalyan Singh himself. The vehicle is insured with the respondent-Insurance Company and therefore, the liability to pay compensation is of the respondentInsurance

Company. Respondent No.3-Insurance Company filed its reply denying the contents of the claim petition and stated that according to the insurance police, Mangilal is not the owner of the offending vehicle, therefore, the Insurance Company cannot be held liable to make payment of compensation.

4. On the basis of pleadings of the parties, the learned Tribunal framed five issues including the issue of relief. The claimants got examined Geeta Kanwar as AW-1 and got exhibited ten documents. No evidence was produced on behalf of the respondents.

5. The learned Tribunal after hearing both the parties and taking into consideration the entire facts and circumstances of the case, vide its judgment and award dated 15.10.2001 awarded a compensation of Rs.3,06,000/- along with interest at the rate of 9 per annum from the date of filing of the claim petition till its realization in favour of the claimants/appellants. Hence, this misc. appeal for enhancement of compensation.

6. Learned counsel for the claimants/appellants submits that the learned Tribunal has committed grave error of law while passing the impugned award as the Tribunal has awarded a meager amount of Rs. 3,06,000/- while ignoring the fact that the deceased was earning a sum of Rs. 15,000/- per month as he was electrician by profession, therefore, learned Tribunal ought to have not discarded the loss of income of the appellants. It is further argued that learned Tribunal has not applied the proper multiplier while computing the compensation. Further it is submitted that the learned Tribunal has only awarded a compensation of Rs.3,000/- for love and affection.

7. Per contra, the learned counsel for the respondent-Insurance Company has opposed the submissions advanced by the counsel for the claimants/appellants and submitted that the award passed by the learned Tribunal is just and proper and warrants no interference.

8. I have considered the submissions on behalf of the counsel for the parties and perused the impugned judgment/award as also material available.

9. As per the postmortem report (Ex-6) the deceased was 45 years of age at the time of accident and he was an electrician by profession. Exhibit-10 was produced by the claimants regarding the income of the deceased which is not a salary certificate rather relating to payment on every visit. Taking into consideration the aforesaid fact, the learned Tribunal held that there is no evidence regarding the monthly income of the deceased. The statement of Geeta Kanwar that his husband?s monthly income was Rs.15,000/- cannot be accepted as a person earning Rs.15,000/-would obviously be an income tax payer, but no such document was produced in this regard.

10. So far as regular income of the deceased is concerned, no material whatsoever was produced in support of the claim by the claimants. The accident took place in the year 2001. Looking to the nature of work of the deceased, the

learned Tribunal determined the monthly income of the deceased as Rs.2,400/- per month and the same requires no interference.

11. Considering the fact that the deceased was an electrician by profession and was 45 years old at the time of accident as also the considering the number of dependent, the learned Tribunal has rightly determined the monthly income of the deceased as Rs.2,400/- PM and rightly applied the multiplier of 15 looking to the age of the deceased being 45 years.

12. While accepting the monthly income of the deceased to be Rs. 2,400/- after deducting one-third amount on personal expenses and applying the multiplier of 15, a sum of Rs. 2,88,00/- was awarded to the claimants.

13. Further, the Tribunal has awarded a sum of Rs. 15,000/- as consortium for mental agony, loss of love and affection. As regards consortium for mental agony, loss of love and affection for the wife of the deceased, in the opinion of this Court, it has been awarded on a lower side as at the time of accident the wife of the deceased must have suffered a great shock and agony and should have been awarded at least Rs. 1,00,000/- on this count. Thus, it is held that the claimant wife appellant no.1 is entitled to Rs. 1,00,000/- towards consortium for mental agony and deprivation of married life. The compensation of Rs.3,000/- awarded for funeral expenses is also on lower side and it should have been at least Rs.15,000/-. Thus, it is held that the claimants are entitled to Rs.15,000/- towards funeral expenses.

14. Accordingly, the appeal is partly allowed and while modifying the judgment and award dated 15.10.2001, the claimants are held to be entitled to get compensation in the sum of Rs. 4,03,000/- (Rs.2,88,000/- + Rs.1,00,000/- + Rs.15,000/-) instead of Rs. 3,06,000/-. The claimants will also be entitled to interest on the enhanced amount of compensation at the rate of 9% per cent per annum from the date of filing the claim petition till realisation.