
(2012) 05 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 4141 of 2006

Jal Shree (Smt.) and Others

APPELLANT

Vs

Hansraj and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Citation : (2013) 2 ACC 169 : (2012) 3 WLN 174

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Manju Dave, for the Appellant; Om Prakash Gupta, Pyare Lal and Mr. Digvijay Mantri, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This appeal has been preferred by claimants seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal (Special Judge, Dacoity Affected area), Bharatpur, vide its award dt. 26.06.2006 in MAC Case No. 38/2006, in a death claim case. Claimants filed claim petition before learned Tribunal for death of Bahadur Singh, husband of appellant no. 1, in a road accident, involving a vehicle insured with respondent insurance company. Learned Tribunal has, after adjudication of matter, awarded total compensation of Rs. 3,74,200/- to claimants. Hence, this appeal for seeking enhancement thereof.

2. Miss Manju Dave, learned counsel for appellants has argued that despite the fact that deceased was working as mechanic and earning Rs. 10,000/- per month, learned Tribunal has assessed his income just at Rs. 2,700/- per month. According to claimants, deceased was earning Rs. 3000/- per month. He was working as mechanic in the firm Krishi Kranti Kendra, Bharatpur. This fact is proved by AW-2 Subhash Chand Gupta, who is the proprietor of the said firm. He stated that deceased used to work on part time basis in morning and evening and thereby used to earn Rs. 7000/- per month. Thus, his monthly earning was Rs. 10,000/-. The salary certificate of deceased was also produced on record and

that was proved by AW-2 Subhash Chand Gupta.

3. Learned counsel argued that as per judgment of the Supreme Court in Santosh Devi vs. National Insurance Company Limited and Others, Civil Appeal No. 3723 of 2012 arising out of SLP (C) No. 24489 of 2010, decided on 23.04.2012, even labours working in unorganized sector on a fixed salary, have now been held entitled to benefit of future prospects. Learned counsel in this connection drew attention of the Court to Para 14 of the aforesaid judgment. In Para 14 of the judgment in Santosh Devi, the Supreme Court observed as under:-

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/ instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's

judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

4. It is also contended that number of claimants being six, deduction for own expenses of the deceased should have been confined only to 1/4th and not 1/3rd, as per ratio of judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

5. Learned counsel argued that nothing has been awarded to widow Smt. Jal Shri for deprivation of consortium and small amount of Rs. 5000/- has been awarded to six claimants cumulatively for loss of love and affection. It is therefore prayed that the compensation be enhanced suitably.

6. Shri Om Prakash Gupta, learned counsel for respondent insurance company opposed the appeal and submitted that learned Tribunal has already awarded substantial compensation of Rs. 3,74,200/-. There is no reason for enhancement thereof. Without there being any documentary evidence, it cannot be accepted that deceased was a mechanic and was receiving monthly salary of Rs. 3,000/- and that he was also earning Rs. 7,000/- while working as part time in morning and evening. His salary cannot be accepted at Rs. 3000/- per month. It also cannot be accepted that he used to earn Rs. 7000/- per month, in addition to his salary. It was argued that if the judgment of the Supreme Court in Sarla Verma, supra, is applied for the purpose of deduction of 1/4th for own expenses of deceased, then multiplier of 17, applied by learned Tribunal, is also liable to be reduced to 16, because age of deceased at relevant point of time was 32 years and judgment of the Supreme Court in Sarla Verma, supra, provides multiplier of 16 to be applied for the persons of this age. The appeal therefore should be dismissed.

7. On hearing learned counsel for appellants as well as learned counsel for respondents and perusing material on record, I find that evidence to the extent that deceased was earning Rs. 3000/- per month, can be taken as proved because not only salary certificate has been produced but also the AW-2 Subhash Chand Gupta, owner of the Firm where deceased was employed, appeared in witness box to prove the same. However, it cannot be accepted that he used to additionally earn Rs. 7000/- per month, more than double the amount of his salary, by working extra hours. As per ratio of judgment of the Supreme Court in Santosh Devi, supra, claimants must be held entitled to at-least 30% increase on salary of deceased for future prospects because he was merely 32 years of age at the time of accident. Thus, monthly income of deceased for that purpose can be considered at Rs. 4000/-. But, at the same time, as per judgment of the Supreme Court in Sarla Verma, deduction of 1/4th is to be made for own expenses of deceased and multiplier of 16 is to be applied for calculation of

compensation. After deducting 1/4th the loss of monthly dependency would come to Rs. 3000/-. The total loss of dependency would come to Rs. 5,76,000/- (3000x12x16).

8. Appellant no. 1 Smt. Jal Shree, widow of deceased, is also entitled to Rs. 10,000/- for deprivation of consortium. However, remaining claimants i.e. two sons, one daughter, mother and father, are held entitled to Rs. 3000/- each for loss of love and affection and care in old age. On this head, compensation of Rs. 15,000/- is awarded to them. Award of Rs. 2000/- for funeral expenses is maintained.

9. Claimant-appellants are thus entitled to receive compensation of Rs. 6,03,000/- (576000+27000) instead of Rs. 3,74,200/-. The appellants would be entitled to interest at the rate of 7.5% per annum on enhanced amount of compensation from date of filing of claim petition till actual payment thereof. Appeal accordingly stands allowed. Compliance of judgment be made within three months from the date its copy is produced before the respondents.