

(2004) 12 RAJ CK 0060
In the Rajasthan High Court

Kiran Devi and Others

APPELLANT

Vs

Bhoora and Others

RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:

Citation : (2005) 2 ACC 841

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Judgement

Dalip Singh, J.—This appeal has been filed against the award passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur dated 30.9.1994 in Claim Case No. 1314/1990 whereby a sum of Rs. 2,06,000/- was awarded by way of compensation to the claimant-appellants on account of the death of Jagdish Saxena, husband of the appellant No. 1 and father of the appellant Nos. 2 to 5 who died as a result of the injuries suffered by him in a motor accident involving the offending vehicle (truck) bearing registration No. RJR-2629 on 12.9.1990.

2. The learned Counsel appearing for the appellants submits that compensation awarded, is inadequate and is liable to be enhanced as the learned Tribunal failed to take into account the fact that deceased was an employee of the Municipal Corporation, Jaipur as Naikedar and even though his age has been determined as 50 years at the time of accident, he had sufficiently long career ahead of him. In which his salary and income was liable to be increased on account of the increments/revision of pay-scales. Therefore, the learned Counsel for the appellants submits that learned Tribunal ought to have taken into account the future prospects, as the stability of the job of the deceased and the amount of monthly income of Rs. 2,988/- that was arrived at by the learned Tribunal ought to have been notionally increased taking into account the future prospects as was done in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , wherein the actual income of the deceased was Rs. 1,032/-. Their Lordships held that on account of future prospects, the notional income of the deceased should be taken

as Rs. 2,000/- per month for determination of the compensation. The learned Counsel for the appellants further submits that in the instant case, the learned Tribunal applied the multiplier of 8 only whereas according to the provisions contained in second Schedule appended to the Motor Vehicles Act, 1988, in the case of persons falling within the age group of 50 to 55, multiplier of 11 has been prescribed.

3. Learned Counsel for the respondents submits that the awarded compensation is just and appropriate and does not call for any interference as the enhancement of the amount of compensation would amount to windfall and which is not the intention of the Legislature.

4. I have considered the rival submissions of the learned Counsel for the parties raised at the bar. In the first instance, so far as the question of income of the deceased is concerned, it is true that as per the finding of the learned Tribunal, the monthly income of the deceased was assessed as Rs. 2,988/- per month on the basis of the actual salary and employments being drawn at the time of the accident i.e., on 12.9.1990. However, as Their Lordships of the Supreme Court have laid down in the case of *Susamma Thomas (supra)* the future prospects cannot be ignored, particularly, when the deceased was in a settled job with assured continuity of service. In that view of the matter, the learned Counsel for the appellant submits that in the case of *Susamma Thomas (supra)* the actual income of Rs. 1,032/- was doubled by Their Lordships of the Supreme Court on the basis of the future prospects to Rs. 2,000/-, therefore, the same procedure must be adopted in the instant case.

5. In the instant case, the deceased was 50 years of age whereas in the case of *Susamma Thomas (supra)* the deceased was 38 years of age, therefore, I am not in favour of taking the notional figure as twice of the actual emoluments being drawn. Nonetheless, the notional income of the deceased can be increased one and a half times i.e., Rs. 4,500/- (Rs. four thousand five hundred only). The amount of personal expenses to the extent of 1/3rd would, therefore, be liable to be deducted from the amount of Rs. 4,500/- leaving the dependency/contribution towards the family as Rs. 3,000/- per month. The amount of compensation on account of loss of income per annum is determined as Rs. 3,000/- x 12 = Rs. 36,000/-.

6. The next question that arises as to what should be the multiplier applied in the facts and circumstances of the present case. The learned Counsel appearing for the respondents submits that in view of the fact that the deceased was an employee of Municipal Corporation, he would have retired at the age of 58 years and, therefore, a multiplier of 8 in the facts and circumstances of the case was the correct multiplier applied by the learned Tribunal. On the other hand, learned Counsel appearing for the appellants submits that as per the provisions of Second Schedule of the Motor Vehicles Act, 1988, the multiplier system has been applied even in the case of the persons above the age of 65 years. The Legislature has also prescribed the multiplier even in the case of the persons

over and above the age of retirement and the formula system and multiplier system should be adopted for arriving at a figure in such cases. I am inclined to accept the submission, particularly, in the view of the fact that the Legislature itself has taken into consideration the fact that even where the deceased achieved the age of retirement, in their case also, while determining the amount of compensation the multiplier has been prescribed and so much so, even in the case of the persons above the age of 65 years, a multiplier of 5 has been prescribed. The Legislature has prescribed the multiplier of 11 in the case of the persons of age group of 50 to 55 years. Therefore, I am inclined to take into consideration the multiplier of 11 in the present facts and circumstances of the case for determining the loss of income and consequential dependency of the family of the deceased. In the result, the loss of income is determined as Rs. 3,000/- x 12 x 11 = Rs. 3,96,000/- (Rs. three lacs ninety-six thousand only).

7. The learned Tribunal has allowed a compensation under the head of loss of income as Rs. 1,91,000/-. The amount of Rs. 1,91,000/- which has been assessed, has been paid to the appellant-claimants. The respondents are entitled to deduct the aforesaid amount of Rs. 1,91,000/- from Rs. 3,96,000/-. Thus, the appellant-claimants are entitled to Rs. 2,05,000/- (Rs. two lacs five thousand only).

8. Consequently, this appeal is allowed. The appellant-claimants are entitled to receive an amount of Rs. 2,05,000/- (Rs. two lacs five thousand only) from the respondents. The respondents shall pay the aforesaid amount of Rs. 2,05,000/- (Rs. two lacs five thousand only) to the appellant-claimants within a period of three months from today. In case, the aforesaid amount is paid or deposited with the learned Tribunal, within a period of three months from today, the same shall be paid or deposited with interest at the rate of 6% per annum w.e.f. the date of filing of the appeal i.e., 2.1.1995. However, it is made clear that in case the respondents fail to pay or deposit the aforesaid amount within a period of three months, the appellants shall be entitled to recover the said enhanced amount from the respondents with interest thereon at the rate of 9% per annum w.e.f. the date of filing of claim petition i.e., 24.9.1990.

9. There shall be no order as to costs.