(2020) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1923 Of 2007

Kusum Bohra APPELLANT

Vs

Ramkaran And Ors RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2020) 10 RAJ CK 0006

Hon'ble Judges : Rameshwar Vyas, J

Bench : Single Bench

Advocate : Prashant Panwar, Rajesh Panwar, L.D. Khatri

Final Decision : Partly Allowed

Judgement

The instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') for enhancement of compensation has been filed by mother of the deceased - Tushar Bohra, against the award dated 19.03.2007, passed by the Motor Accident Claims Tribunal No.1, Jodhpur (for short 'Tribunal') in MAC No.57/2005, whereby, the Tribunal has awarded a sum of Rs. 3,07,000/- alongwith interest @ 6% per annum from the date of filing claim petition i.e. 18.01.2006.

Relevant facts of the case are that on 08.06.2005 deceased Tushar Bohra died in a road accident caused by a Truck bearing registration No. RJ10-G-0545, driven by Ram Karan - respondent No. 1 herein in a rash and negligent manner. A claim petition under Section 166 of the Act of 1988 had been filed by mother of the deceased with the averments that deceased was aged 23 years at the time of accident; he was student of third year studying in Sobhasaria Engineering College, Sikar in Electronics & Communication stream; the Truck involved in the accident was insured with National Insurance Company Ltd. - respondent No. 3 for the period from 19.05.2005 to 18.05.2006; deceased was a brilliant student right from his school career; the applicant is widow of late Surendra Kumar Bohra (Jain). The claimant prayed for awarding a sum of Rs. 1,35,28,000/- as compensation.

The Insurance Company - respondent No. 3 filed a reply to the claim petition disputing the negligence of Truck driver; the owner of the Truck did not file any reply to the claim petition filed by the claimant.

On behalf of claimant AW-1 - Kusum & AW-2 Abhishek were produced as oral evidence before the Tribunal; no evidence was produced on behalf of non-claimants.

After inquiry, the learned Tribunal has awarded a sum of Rs. 3,07,000/- alongwith interest @ 6% per annum as compensation in the following manner:-

Loss of income	Rs. 3,00,000/-
Funeral expenses	Rs 2,000/-
Mental agony	Rs 5,000/-
Rs. 3,07,000/-	

Being aggrieved and dissatisfied with the award & judgment passed by the Tribunal, the claimant filed the present appeal before this Court with the prayer to enhance the compensation amount awarded by the learned Tribunal.

Learned counsel for the appellant while relying on the decision rendered by the Hon'ble Supreme Court in the case of Kishan Gopal & Anr. v. Lala & Ors. : (2014) 1 SCC 244 contended that the learned Tribunal has erred in law and fact in limiting the claim of appellant for a meagre sum of Rs. 3,07,000/- only; it was submitted that quantum of compensation as assessed by the learned Tribunal is against the settled principles of law and, therefore, the same deserves to be enhanced suitably; it was submitted that the evidence produced by the claimant has not been appreciated in a right perspective.

It was further submitted that the deceased was a brilliant student. After the death of appellant's husband, he was the only son for her support; the learned Tribunal has failed to take into consideration all the material facts while assessing the quantum of compensation. Learned counsel also submitted that the Tribunal has also failed to consider the future prospects; it has further erred in awarding interest @ 6% per annum only.

On the other hand, learned counsel for the respondent- Insurance Company contended that the amount of compensation awarded by the Tribunal is just and fair.

Heard learned counsel for the parties and perused the material available on record.

The question before this Court is what is the just and fair compensation to be awarded in this case.

It is admitted fact that the deceased Tushar was not an earning member at the time of his death; he was studying in third year of Sobhasaria Engineering College in Electronics & Communication Engineering. In the above circumstances, the loss of income should be assessed on the basis of notional income of the deceased.

Upon perusal of the educational certificates produced by the claimant, in support of the claim petition, it is revealed that the deceased secured good percentile and grade in Secondary & Senior Secondary Examinations. In Engineering course also he secured first division marks. In addition to educational qualifications, deceased also participated in extracurricular activities of the college. Exhibit-14 of the claim petition reveals that deceased participated in 46th Annual All India General Knowledge Test. He also participated in Inter-State Level Tests in Mathematics, 1998. As per Exhibit-15 of the claim petition he also participated in National Mathematics Olympiad Contest, 1999, for which, B-Level Certificate (Exhibit-16) has been produced. He also obtained first position in Cricket Tournament. Exhibit-18 of the claim petition is certificate regarding his participation in Football.

In view of the academic and other qualifications of the deceased and the other material facts, this Court deems it just and reasonable to take his notional income as Rs. 4,000/- per month.

Looking to the age of the deceased at the time of accident, 40% of his income is to be added while calculating the loss of income by applying ratio laid down in the case of National Insurance Company Ltd. v. Pranay Sethi & Ors. : (2017) 16 SCC 680. So far as deduction towards personal expenses of the deceased is concerned, deceased was bachelor at the time of his death, hence following the ratio laid down by Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation : (2009) 6 SCC 121, 1/2 of the income is to be deducted towards personal expenses of the deceased from his income to arrive at the loss of income of the claimant.

By applying the ratio laid down in the case of Sarla Verma (supra) in the present case, the multiplier of 18, prescribed for the age group of 21-25, has to be applied for calculating the loss of income.

With regard to compensation money in the head of conventional expenses, by applying the ratio of Hon'ble Supreme Court in the case of Pranay Sethi (supra), Rs. 70,000/- should be awarded.

In view of the above discussion, the appellant-claimant is entitled to get compensation in the following terms:- Monthly income Rs. 4,000/-

Annual income Rs. 4,000 x12 Rs. 48,000/-

Add 40% towards future prospects Rs. 67,200/- Rs. 48,000+19,200 Less 1/2 towards personal expenses Rs. 33,600/-

Rs. 67,200-33,600

Net annual loss Rs. 33,600/-

Multiplier to be applied - 18

Loss of dependency Rs. 33,600x18 Rs.6,04,800/-

Add general expenses Rs. 70,000/-

Total compensation awardable Rs. 6,04,800+70,000 Rs.6,74,800/-

Less amount awarded by the Tribunal Rs.3,67,800/-

Rs. 6,74,800-3,07,000

Enhanced amount of compensation Rs.3,67,800/-

In view of the above, the appellant-claimant would be entitled to get a further sum of Rs. 3,67,800/-, which shall carry interest @ 6% per annum from the date of filing claim petition i.e. 18.01.2006.

Consequently, the appeal is partly allowed. The award dated 19.03.2007 is modified to the extent that claimant would be entitled to a compensation of Rs. 6,74,800/- instead of Rs. 3,07,000/- as awarded by the Tribunal. On the enhanced amount of compensation i.e. Rs. 3,67,800/-, the appellant- claimant would be entitled to get interest @ 6% per annum from the date of application i.e. 18.01.2006 till the date of actual payment. The enhanced compensation amount shall be paid by the Insurance Company within a period of one month from this judgment in the saving bank account of the claimant through the Tribunal.

