

(2019) 02 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2228 Of 2018

Lalita Amd Ors

APPELLANT

Vs

Jagmalram And Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 138, 173
Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2019) 02 RAJ CK 0086

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : M.L. Khatri

Final Decision : Dismissed

Judgement

Appellant-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act') seeking enhancement of compensation quantified and awarded by Motor Accident Claims Tribunal, Barmer (for short, 'learned Tribunal') by its judgment and award dated 21st of February 2018.

The facts, in brief, giving rise to this appeal, are that on the fateful day of 20th July 2018, when Kailash Kumar & Bhawani Shankar were travelling in Indica Car No.RJ-04-CA-1836 towards Jodhpur, their vehicle met with an accident near Kawas. The accident occurred due to rash and negligent driving of Highwa Dumper No.RJ-04GA-7436 by its driver. In the accident, both Kailash Kumar & Bhawani Shankar suffered grave and serious injuries. Bhawani Shankar succumbed to the injuries at the spot and Kailash Kumar died during treatment. The accident was reported to concerned police station and, thereupon, FIR was registered and finally driver of dumper was chargesheeted for offence under Sections 279, 337 and 304-A IPC. The appellant-claimants, being dependents and legal heirs of deceased Bhawani Shankar, laid a claim before the learned Tribunal quantifying compensation to the tune of Rs.1,06,50,000/- under different heads. Besides attributing negligence on the part of offending vehicle

(Dumper), it is also averred in the claim petition that at the time of accident, deceased was 32 years of age and earning his livelihood by doing job at grocery shop and earning Rs.12,000/- per mensem.

Claim petition is contested by driver and owner of offending vehicle as well as insurer. On behalf of insurer, it was averred that the insured violated terms of the insurance policy. Besides claim filed on behalf of dependents and legal heirs of Bhawani Shankar, one claim petition was also filed on behalf of legal heirs and dependents of deceased Kailash Kumar and the learned Tribunal consolidated both the claim petitions and permitted the parties to lead their evidence. For substantiating their claim, on behalf of appellants, appellant No.1 Lalita herself appeared in the witness box and testified on oath. In her statement, she has stated income of the deceased as Rs.12,000/- per month, which he was earning while working at grocery shop. However, no details about grocery shop were furnished nor any documentary proof about income of the deceased was tendered.

It is in that background, the learned Tribunal, on the basis of evidence decided Issue No.1 regarding rash and negligent driving in favour of the appellants and against the respondents. The objection on behalf of insured about violation of terms of the insurance policy was also decided against it. The crucial issue regarding quantum of compensation was partly decided by learned Tribunal in favour of the appellants by considering minimum wages as Rs.5,122/- per month because no proof much less cogent proof about income of deceased was furnished on their behalf. That apart, the learned Tribunal also applied multiplier of 16 and after adding 40% income towards future prospects of deceased, deducted one-fourth for his personal expenses and awarded compensation for loss of dependency to the tune of Rs.10,32,600/-. Besides that, learned Tribunal also awarded compensation under different heads and finally arrived at a figure of Rs.11,02,600/-.

I have heard learned counsel for the appellants, perused the impugned judgment & award and examined record of the case.

Amount of compensation determined by learned Tribunal, in my opinion, is just and proper being founded on genuine considerations and relying on decisions of Supreme Court in case of Sarla Verma & Ors. V/s. DTC & Ors. [(2009) 6 SCC 121] and National Insurance Company Ltd. V/s. Pranay Sethi & Ors. [(2017) 16 SCC 680]. In totality, the learned tribunal has quantified just compensation in the peculiar facts and circumstances of the case, which by any stretch of imagination cannot be categorized as unreasonable and not satisfying the requirements envisaged under Section 168 of the Act.

In view thereof, no case for enhancement of compensation is made out. Consequently, the appeal fails and same is, hereby, dismissed.