(2014) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 1359, 1358 and 1362/2001

Man Mohan Sharma and Others — APPELLANT

Vs

Ganpat Singh and Others — RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 03 RAJ CK 0024

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : R.S. Agarwal, Advocates for the Appellant; Satendra Sharma, Advocates for the Respondent

Judgement

Nisha Gupta, J.—All these Misc. Appeals Under Section 173 of the Motor Vehicles Act, 1988 have been filed against a common judgment/award dated 26.5.2001 passed by Judge, MACT, Sawai Madhopur hence decided by this common judgment.

2. All these appeals have been preferred by the claimants for enhancement of compensation.

3. The short facts of the case giving rise to these appeals are that different claim petitions have been filed before the Motor Accident Claims Tribunal which arises out of accident occurred on 6.10.2000 when Lakshmi Kant with his wife Smt. Hemlata were returning on their Motor Cycle from a temple, at about 9.15 PM, a Marshel Jeep No. RJ 25/T-0135 driven rashly and negligently hit the motor cycle. Smt. Hemlata died and Lakshmi Kant received serious injuries. Driver of the Jeep Dinesh also died at the spot. The contention of the present appellants is that only a meager amount has been awarded, hence these appeals.

(i) Claim Petition No. 11/2001 (Appeal No. 1359/2001)

(i) In this appeal, it has been stated that the deceased was 22-23 years of age, he was carrying on the shop for repairs of electrical articles but the court below has assessed his income much less the notional income, hence his income should be assessed on higher side looking to the age of the parents the appropriate multiplier is 13, for love and affection and for funeral expenses, no amount has been awarded.

Per contra, the contention of the respondents is that there is no error in the impugned judgment.

(ii) It is not in dispute that the deceased was of the age of 22-23 years, it has been claimed that he was running a shop but no documentary evidence has been produced hence the court below has rightly assessed the income on the scale of minimum wages prevalent at the relevant time. The contention of the present appellants is that income be assessed on notional basis is not acceptable as the appellants have not come with a case that the deceased was not earning anything, hence there is no error in the calculation of the income of the deceased. It is true that the claimants are between the age of 45 to 50 years and looking to the age of the dependents, the appropriate multiplier as held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , is 13 instead of 11 awarded by the Tribunal. For loss of love and affection and for funeral expenses, the court below has not awarded any compensation, hence for loss of love and affection Rs. 10,000/- to each of the claimants and for funeral expenses Rs. 5,000/- is liable to be awarded.

(iii) The appellants have relied upon Kishan Gopal and Another Vs. Lala and Others, where looking to the age of the deceased and particular facts of the case, a higher amount of compensation has been assessed which is not the case here. Further reliance has been placed on Pramod Sharma v. Pawan Kumar & ors., II (2010) ACC 351; Mukti & Anr. v. Happu Singh & ors., I (2010) ACC 66; Manju Devi and Another Vs. Musafir Paswan and Another where deceased was not having any income, hence on the basis of notional income loss of income has been assessed but admittedly, here in the present case, the claim of the appellants is that the deceased was working and fetching income. Further reliance has been placed on Khel Das v. Virendra Singh & ors., I (2009) ACC 429 where the victim was child of age group of 10-15 years which is not case here. Hence all these law does not support the case of the present appellants. Further reliance has been placed on Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, where on the basis of age of deceased, multiplier has been selected but here in the present case, the appellants have not objected on the calculation of the multiplier and the selection of multiplier would depend upon years of dependency which has been purchased by the dependents. Admittedly here father and mother are the dependents and years of dependency could be considered only upto their lifetime hence in the present case, the court below has rightly assessed the multiplier considering the age of the dependents."

Hence, in the light of the above, the impugned award is modified in the terms that claimants are entitled for compensation for loss of income by applying the multiplier of 13 which comes to 1200 x 12 x 13 : 1,87,200-1,58,400/- (awarded by the Tribunal) = 28,800/- and Rs. 25,000/- (20,000+5,000) total 53,800/- is awarded for loss of love and affection and for funeral expenses. The compensation on other head is confirmed. The enhanced amount of Rs. 53,800/- shall be paid to the appellants by the Insurance Company within a period of two months from today along with interest @ 6% P.A., from the date of filing the appeal.

With these directions, the appeal is partly allowed.

(ii) Claim Petition No. 8/2001 (Appeal No. 1358/2001)

The contention of the appellants in this appeal is that the deceased was 33 years of age, she was earning income as commission agent but the court below has not assessed her income and as per Schedule II of the Motor Vehicles Act, the income of the spouse who is non earning should be calculated 1/3 of the income of the earning spouse and admittedly, Laxmi Kant husband of the deceased was earning Rs. 8585/- as salary which has been proved in claim No. 10/2001. Looking to the age of the dependents the multiplier has been applied wrongly and for loss of love and affection and for funeral expenses no amount has been awarded, hence the amount should be enhanced properly.

Per contra, the contention of the respondents is that just and fair compensation of Rs. 1,51,000/- has been awarded and no interference is needed.

(ii) The case of the appellants was that deceased was earning commission but Ex. 77 and 80 could not fortify this fact as all the documents have been presented by the claimant Laxmi Kant after the death of deceased which itself puts a question mark on the genuineness and truthfulness of the documents and no other documentary evidence of the lifetime of the deceased has been produced to show that the deceased was having any regular income. The contention of the present appellants is that as per Schedule-II, the income of the deceased should be assessed 1/3 of the earning spouse and reliance has been placed on Arun Kumar Agrawal and Another Vs. National Insurance Company and Others, where it has been held that for notional income of non-earning person in case of spouse 1/3 income of earning spouse should be taken for the purpose of computing the compensation. Hence in this view of the matter, the compensation should be enhanced properly. Salary certificate of Laxmi Kant has been produced in the Claim Petition No. 10/2001 as Ex. 74 in which his salary has been stated as 8585/- including house rent allowance and apart from this income tax deduction have to be made, hence the income of Laxmikant be assessed as Rs. 7,000/- per month.

(iii) Looking to the age of the dependent multiplier of 16 is to be applied. The contention of the appellants seems to be sound that for loss of love and affection, consortium and funeral expenses, no amount has been awarded. Hence for consortium Rs. 10,000/- for love and affection Rs. 5,000/- to each dependents and Rs. 5,000/- for funeral expenses is to be allowed."

Hence, in the light of the above, the impugned award is modified in the terms that claimants are entitled for compensation for loss of income as 7,000x 1/3 : 2333-1/4 : 1750 x 12 x 16 : 3,36,000- 1,51,000 : 1,85,000/- and Rs. 30,000/- (10,000+15,000+5000) is awarded for consortium, loss of love and affection and for funeral expenses. The enhanced amount of Rs. 2,15,000/- shall be paid to the appellants by the Insurance Company within a period of two months from today along with interest @ 6% P.A., from the date of filing the appeal.

With these directions, the appeal is partly allowed.

(iii) Claim Petition No. 10/2001 (Appeal No. 1362/2001)

The contention of the appellant is that injured suffered 60% disability, he is to engage one attendant but for the same no compensation has been awarded for loss of income and disability, nothing has been assessed and for pain and suffering also a meager amount has been awarded.

Per contra, the contention of the respondents is that there is no infirmity in the impugned judgment and a jut and fair compensation ha been awarded.

"(ii) Laxmi Kant has suffered 7 injuries in the accident and he has suffered 60% disability looking to the disability Rs. 1,50,000/- has been awarded under this head and for pain and suffering Rs. 30,000/- has been awarded. Admittedly, the injured was a government employee, he remained in service and there is no case that any promotional avenues have been shortened in spite of this for salary of 108 days, Rs. 30,888/- has been allowed. On two occasions, the appellants have availed commuted leave which is not encashable but in spite of this, the court below has awarded compensation for the same. The contention of the appellants is that for loss of income, no compensation has been awarded. The contention of the respondent seems sound that the appellants have not suffered any loss of income as he was getting regular salary, hence the court below was justified in not awarding compensation for loss of income.

(iii) The contention of the appellants is that he has to employ an attendant, but no such evidence has been produced before the court below and the court below was justified in not awarding any compensation for the employment of attendant.

(iv) The other contention of the appellants is that for pain and suffering, nothing has been awarded but the impugned award goes to say that for pain and suffering Rs. 30,000/- has been awarded. Reliance has been placed on Shashendra Lahri Vs. UNICEF and Others, where looking to the facts of the case that right leg has been shortened by 3 inch, Rs. 30,000/- compensation has been awarded which differs from the facts of the present case, hence the court below has awarded fair and reasonable compensation and no interference is required."

Consequently, appeal No. 1362/2001 stands dismissed.

