
(2014) 03 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 823 of 2005

Mariyam and Others

APPELLANT

Vs

Ahmed and Others

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2015) 3 ACC 190 : (2015) ACJ 803

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Dron Kaushik, Advocates for the Appellant; A.K. Dadhich, Advocates for the Respondent

Judgement

Sandeep Mehta, J.—Heard the learned counsel for the parties. The instant appeal has been filed by the appellants-claimants, the legal representatives of late Abdul Samad, seeking the enhancement of compensation of Rs. 3,12,000 awarded to them by the learned Additional District Judge (Fast Track) No. 4 (M.A.C.T. Cases), Jodhpur vide judgment and award dated 17.3.2005 in Motor Accident Claim Case No. 246 of 2004 (57 of 2002).

2. Briefly stated, the facts of the case are that the deceased Abdul Samad used to work with one Ahmed Musalman, resident of Bakra Mandi, Jodhpur and used to assist him in the business of selling sheep and goats. The deceased was going for selling the cattle in Jonga Jeep No. RJ 04-C 183 driven by Mohammed Hanif and owned by Ahmed on 11.12.2000. The driver drove the jeep rashly and negligently and as a result thereof, the jeep overturned. The deceased Abdul Samad received head injuries and expired on the spot. The claim application was moved by the appellants-claimants who are the widow, mother, brothers, sisters, father and daughter respectively of the deceased. The claim petition was filed by the appellants-claimants praying for compensation to the tune of Rs. 40,37,000.

3. The issues regarding the accident being caused by rash and negligent driving of the insured vehicle by its driver; the defences raised by the insurance

company being not tenable; and the appellants being entitled to compensation were all decided in their favour by the learned Tribunal. The claim application was partly allowed holding the respondents--owner, driver and insurer of the jeep--jointly and severally liable to satisfy the award. These findings have not been challenged by any of the respondents-non-claimants and thus, they have become final.

4. Thus, the only issue which calls for consideration of this court in this appeal is whether the quantum of award passed by the learned Tribunal in favour of the claimants is inadequate and whether the same deserves to be enhanced.

5. Learned counsel for the appellants urged that the learned Tribunal has erred on the following counts in calculating the compensation awarded to the appellants:

(i) The income of deceased as claimed in the claim petition and as per the evidence led before the learned Tribunal was Rs. 4,000 per month whereas the learned Tribunal had recorded a finding without any justification that his income was Rs. 2,000 per month only. It was submitted that as per the un-controverted evidence of the appellant Mariyam and DW 1 Ahmed, the deceased was having a monthly income of Rs. 4,000. As the evidence was not challenged by cross-examination on behalf of any of the respondents, the Tribunal was unjustified in not accepting the claimants' version regarding the income of the deceased. It was thus submitted that the awardable compensation deserves to be computed while taking Rs. 4,000 per month as the income of the deceased.

(ii) No consideration for future prospects and rise in income was made by the learned Tribunal.

(iii) The deduction of 73rd towards personal needs and expenses is unwarranted in view of the fact that the claimants are nine in number.

(iv) The meagre amount of Rs. 10,000 awarded to the appellant wife towards loss of consortium is inadequate.

(v) The amount of Rs. 10,000 in all awarded to all the appellants towards loss of love and affection and service is also unjust and inappropriate.

(vi) As the deceased was in the age group between 20-25 years at the time of his death, the multiplier to be applied would be 18 and not 17 as applied by the learned Tribunal.

6. He thus prayed that the award deserves to be enhanced appropriately.

7. Per contra, the learned counsel for the respondents have opposed the submissions advanced on behalf of the appellants-claimants.

8. Heard and considered the arguments advanced at the Bar and perused the impugned judgment as well as the record.

9. The specific pleading regarding the income of the deceased in the claim

petition was of Rs. 4,000 per month. Evidence was led by the claimants in the form of witness Mariyam, PW 1, for proving the income of the deceased to be Rs. 4,000 per month. No significant cross-examination whatsoever was done on behalf of the non-claimants to discredit her testimony. DW 1 Ahmed, employer of the deceased, also appeared in evidence and admitted in his cross-examination that he was paying Rs. 3,000 per month to the deceased as salary. In addition, he paid a sum of Rs. 1,000 to the deceased as overtime allowance. In the claim application also, the monthly income of the deceased is estimated at Rs. 4,000. Thus, this court is of the opinion that the learned Tribunal was unjustified in truncating and holding the income of the deceased to be Rs. 2,000 per month only. Fact regarding the deceased working with Ahmed in the business of selling and buying sheep and goats is not disputed. Ahmed in his evidence has specifically stated that he used to pay him Rs. 3,000 per month as salary and Rs. 1,000 as overtime allowance. The amount of Rs. 1,000 as overtime cannot be accepted as an income with certainty. Thus, the income of the deceased is assessed to be Rs. 3,000 per month.

10. No consideration of rise in income and future prospects was made by the learned Tribunal. Thus, an addition of 30 per cent deserves to be made to the income under this head.

11. The appellants-claimant Nos. 3, 4, 5, 6 and 7 are the siblings of the deceased and thus, they cannot be held to be his dependants because the father, Abdul Salim, one of the claimants, is still alive. Therefore, a total of four claimants, namely, the appellant No. 1 Mariyam, appellant No. 2 Raisa, appellant No. 8 Abdul Salim and appellant No. 9 Amna being wife, mother, father and daughter of the deceased Abdul Samad are held to be dependants of the deceased. As the claimants are four in number, the deduction towards personal expenditure and needs of the deceased would be 1/4th and not 1/3rd as done by the learned Tribunal, in the light of the judgment passed by the Hon"ble Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

12. The age of the deceased being between 20-25 years as held by the learned Tribunal, the multiplier to be applied in the light of the decision of the Hon"ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , would be 18 and not 17 as applied by the learned Tribunal.

13. The amount of Rs. 10,000 awarded to the appellant wife for loss of consortium is highly inadequate and the same deserves to be enhanced to Rs. 40,000. The amount of Rs. 10,000 awarded to the appellant Amna, the unborn daughter, who was in the mother's womb when the deceased expired, is grossly inadequate and the same deserves to be enhanced to Rs. 40,000. Similarly, the amount of Rs. 10,000 awarded to the parents of the deceased towards loss of love and affection is also meagre and the same deserves to be enhanced to Rs. 20,000 each.

14. In view of what has been discussed above, the following computation is

approved for deciding the quantum of compensation awardable to the claimants-appellants:

15. The payment of the original awarded amount shall be made in terms of the order passed by learned Tribunal, whereas on the enhanced amount, the claimants shall be entitled to an interest at the rate of 7.5 per cent per annum from the date of filing of the claim petition. Out of the enhanced amount, 50 per cent, 15 per cent, 15 per cent and 20 per cent shall be paid to the appellant No. 1 Mariyam (wife), appellant No. 2 Raisa (mother), appellant No. 8 Abdul Salim (father) and appellant No. 9 Amna (daughter).

16. In order to ascertain that the claimants are benefited to the maximum by the enhancement in the award, the following directions are given for the disbursal of the awarded amount:

(1) 20 per cent of the enhanced amount shall be paid to the claimants in cash.

(2) The remaining 80 per cent shall be deposited in fixed deposits in any nationalised bank with a lock-in period of 5 years by applying the best available fixed deposit term plan. The interest upon the fixed deposits shall be disbursed to the claimants periodically. The banker shall be instructed not to issue any loan against the fixed deposits.

(3) If in any emergent condition the claimants require the modification of the said direction, they shall be at liberty to file a writ petition before this court for the release of the amount from the fixed deposit(s).

17. Any amount already paid by the insurance company under section 140 and/or proviso to section 173 or any other amount, shall be adjusted towards the amount finally awarded by this court.

18. Accordingly, the appeal filed by the claimants is allowed in part as aforesaid.

19. There shall be no order as to costs. Record of the learned Tribunal be sent forthwith.