

**(2016) 08 RAJ CK 0030**  
**In the Rajasthan High Court**  
**Case No : Civil Misc. Appeal No. 684 of 2001**

Mst. Hussaini @ Hussain Bano

APPELLANT

Vs

Shri Tirth Singh

RESPONDENT

**Date of Decision :** 16-08-2016

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 168, 173

**Citation :** (2016) 2 WLCRajUC 466

**Hon'ble Judges :** Mr. Arun Bhansali, J.

**Bench :** Single Bench

**Advocate :** Mr. Usman Gani, Advocate, for the Petitioner; Mr. Rajkumar Mehta, Advocate, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Mr. Arun Bhansali, J.—This appeal is directed against the judgment and award dated 13.4.2001 passed by the Motor Accident Claims Tribunal, Bhilwara ("the Tribunal"), whereby the Tribunal has awarded a sum of Rs.1,91,500/- as compensation along with interest @ 3% p.a. w.e.f. 18.9.1992 to 13.1.1999 on a sum of Rs.1,91,500/- and from 15.1.1999 to date of payment on a sum of Rs.1,41,500/- along with cost of Rs.500/-.

2. Two applications for compensation were filed for death of one Jakir. The first application was filed by mother and three brothers of deceased Jakir and the second application was filed by Parveen wife of Late Jakir.

3. It was inter-alia contended that the deceased was second driver on truck No. MIU-9500 and when the said truck was travelling to Neemuch on 28.5.1992 and was being driven by Mohd. Khalid, Mohd. Khalid drove the truck rashly and negligently, which resulted in the said truck colliding with another truck No. JKU-1855, which was also being driven rashly and negligently, which resulted in death of Jakir Hussain, a sum of Rs.20,00,000/- was claimed as compensation.

4. It was inter-alia indicated that the deceased earned a sum of Rs.4,000/- per

month, was aged 27 years and based on the said submissions, the compensation was claimed.

5. After evidence was led by the parties, the Tribunal came to the conclusion that the age of the deceased qua 27 years, the income as driver of Rs.2,000/- was not accepted on account of the fact that his driving licence was not produced; income of Rs.1,500/- towards doing the bus repairing work was also not accepted on account of the fact that no diploma was produced. The claim of Rs.500/- towards agriculture income was also not accepted for lack of any material.

6. The Tribunal came to the conclusion that the deceased was working as cleaner of the truck and treating his income at Rs.800/- and maximum at Rs.1,500/- per month and after deducting Rs.500/- as personal expenses, determined the loss of dependency of Rs.1,000/- per month and applying multiplier of 14 a sum of Rs.1,68,000/- as loss of income; Rs.15,000/- towards loss of consortium; Rs.5,000/- towards loss of love & affection to mother; Rs.3,000/- towards funeral expenses and Rs.500/- towards transportation of dead body was awarded along with interest as indicated herein-before.

7. It is submitted by learned counsel for the appellant that the Tribunal committed error in coming to the conclusion that the deceased was working as cleaner only; from the material available on record though the driving licence could not be produced, it is proved that the deceased was working as second driver and therefore, the income needs to be assessed by treating the deceased as driver.

8. Further submissions were made that the multiplier has wrongly been adopted contrary to the law laid down by the Hon'ble Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.* : (2009) 6 SCC 121. Submissions were made that the award of interest @ 3% p.a. is without any cogent reasons and therefore, the same also cannot be upheld.

9. Further submissions were made that the amount towards loss of consortium and loss of love & affection are on the lower side and therefore, the compensation deserves to be enhanced.

10. Learned counsel for the respondents supported the award impugned. It was submitted that the very fact that licence was not produced is sufficient to come to a conclusion that the deceased was not working as a driver and therefore, the Tribunal was justified in awarding the compensation. It was submitted that the claim was filed in the year 1992 and the same remained pending on account of default on part of the claimants and therefore, the Tribunal was justified in awarding interest @ 3% p.a. only.

11. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. It was the consistent case of the claimants that the deceased was working as

second driver on the truck in question. The material pertaining to the police investigation also indicates the stand of Khalid, the driver, who was held responsible for rash and negligent driving that the deceased was the second driver. The fact that his driving licence could not be produced though creates doubt regarding the fact as to whether the deceased was having a driving licence as driver, however, both the mother and the wife, who appeared in the witness-box clearly indicated that the deceased was a driver and was in possession of driving licence. It is not unknown with regard to the drivers and the strata from which, they come that the family members are not aware of the driving licence etc. and that if the deceased was carrying the driving licence may be at the time of accident, the same might have been lost. Therefore, in view of the consistent oral evidence available on record pertaining to the deceased being a second driver i.e. the statement before the police by the driver Khalid and both wife and mother, the plea of the claimants that the deceased was working as driver deserves to be accepted.

13. The claimants have indicated the income of the deceased at Rs.2,000/- per month as driver, however, the further claims made regarding earning of Rs.1,500/- per month while doing bus repairing work appears to be in contradiction to the fact that the deceased was getting Rs.2,000/- per month as driver, inasmuch as, if he was working as driver there was no question of getting any time to do the bus repairing work, which can only be done at one place and cannot be done wherever he was travelling as a driver. The Tribunal was justified in coming to the conclusion that the claim of Rs.500/- towards agriculture income has no basis.

14. In view of the above, the income of the deceased instead of Rs.1,500/- per month is taken at Rs.2,000/- per month and further in view of the law laid down by the Hon'ble Supreme Court in the case of Sarla Verma (supra), a multiplier of 17 instead of 14 deserves to be applied. Based on the said, the loss of income would be  $\text{Rs.}2000 \times 665 = \text{Rs.}1335 \times 12 \times 17 = 2,72,340/-$ . Further the award of a sum of Rs.15,000/- towards loss of consortium to the wife and Rs.5000/- to the mother are also on the lower side, which is also enhanced to Rs.20,000/- and Rs.10,000/- respectively.

15. So far as the award of interest @ 3% p.a. only is concerned, the Tribunal has indicated that the matter was pending since 1992 and the evidence was closed by the claimants on 9.1.2001 and prior to that, for service on the non-claimants and for evidence, the claimants took time. The very fact that non-claimants could not be served, the blame cannot be put on the claimants, inasmuch as, the respondents were from Jammu & Kashmir and from Ujjain, Madhya Pradesh, the matter was fixed for evidence of the claimants on 24.3.1999 and the same was completed on 9.1.2001, which period cannot be said to be excessive so as to deny interest to the claimants.

16. In view thereof, the award of interest @ 3% p.a. by the Tribunal cannot be sustained. The claimants would be entitled to interest @7% p.a. from the date of

application i.e. 18.9.1992 till the date of actual payment.

17. In view of the above discussion, the appeal is partly allowed. The award dated 13.4.2001 is modified to the extent that instead of a sum of Rs. 1,91,500/-, the claimants would be entitled to compensation to the tune of Rs.3,06,340/- along with interest @ 7% p.a. w.e.f. 18.9.1992 till the date of actual payment. Out of the amount now payable to the claimants, 60% of the amount would be paid to Mst. Parveen - wife of the deceased and 40% of the amount would be paid to Mst. Hussaini - mother of the deceased in their saving bank account. The Tribunal would calculate the amount of interest payable based on various payments made by the Insurance Company from time to time.

18. The amount of enhanced compensation be paid by the respondent ? Insurance Company to the appellants within a period of six weeks from the date of judgment.