

(2008) 04 RAJ CK 0012
In the Rajasthan High Court

Mukti (Smt.) and Another

APPELLANT

Vs

Shri Happu Singh and Others

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 4

Citation : (2008) 4 RLW 3556

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. These two appeals are directed against the award of the Tribunal dated 24.9.1999 passed by M.A.C.T., Hindaun City. While Appeal No. 1594/99 has been filed by the claimant, the appeal No. 494/2000 has been filed by the insurance company. The claimant appellant has questioned the correctness of the quantum of compensation on the ground that even though it was proved by Ex.8 that the deceased himself was having the agriculture land of eight and a half bigha and that he was earning a sum of Rs. 2500- 3000 per month, yet the Tribunal did not accept that proof and computed the compensation on estimated notional income of the deceased at Rs. 15,000/- per annum and out of that also 50% of the amount was deducted which according to the Tribunal, the deceased would have spent on himself. It was argued that when Smt. Mukti PW-1 widow of the deceased has stated that her husband was earning Rs. 80-90 per day, there was no basis for the Tribunal to assume that the appellant was having only notional income. Learned Counsel cited the judgment of this Court in Kamlesh and Ors. v. Rajasthan State Road Transport Corporation and Ors. 2006 R.A.R. 137 (Raj.) : RLW 2805(3) Raj. 1654, Naviya and Ors. v. UII Co. and Ors. 2008 WLC (Raj.) 64 and argued that this Court in the aforesaid two cases has taken the view that when computation of compensation is made on the basis of notional yearly income of Rs. 15,000, deduction of 1/3rd personal expenses out of the notional income of Rs. 15,000/- should not be made. In the present case, the Tribunal

has made such deduction by 50% which is wholly unjustified.

3. Shri S.R. Joshi, learned Counsel appearing for the insurance company has submitted that though the widow Mukti has stated that the deceased had the landed property, but at the same time, she has also stated that her deceased husband did not get the work on regular basis and that he used to work for three to four months in a year. There was thus no proof of regular income of the deceased and therefore the Tribunal was justified in assuming the notional income of the appellant to be Rs. 15,000/- per annum. Learned Counsel also cited the judgment of Supreme Court in *United India Insurance Co. Ltd. Vs. Gian Chand and others*, and argued that Supreme Court in that case gave the liberty to the insurance company to recover the amount of compensation from the owner of the vehicle because in that case the owner of the vehicle did not appear in the witness box to rebut the proof that the driver was not having any driving licence and yet he permitted the vehicle to be driven by him. Learned Counsel also cited the judgment of *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, and argued, in that case, like in the present case also that the appellant had produced the report of the surveyor to show that the driving licence produced before the Tribunal was fake and the certificate obtained from R.T.O. was also produced but merely because the insurance company could not produce the RTO and the Surveyor in evidence to prove them, it was not granted that liberty to recover the compensation from the owner.

4. Having heard the learned Counsel for the parties, I have perused the impugned award and other material on record.

5. The kind of evidence that has come on record, clearly show that there was no definite proof of income of the deceased. Even the copy of jamabandi produced at Ex.8 did not prove that the entire agriculture land of eight and a half bigha was in the sole name of the deceased, Although his widow has denied the suggestion that the deceased had only 1/4th share in that agriculture land, but at the same time, she could not give any evidence of regular income of the deceased. She has stated before the Tribunal that her husband was getting the job on daily wage basis only for there to four months in an year and that he was mostly getting Rs. 80-90 per day and sometimes even Rs. 100/-. In those facts, the approach of the Tribunal in proceeding to adopt the notional income of Rs. 15,000/- per month as the basis for award of compensation cannot be faulted. In *Kamlesh and Ors. supra*, it was observed by the coordinate bench of this Court that as per Second Schedule if the notional income of Rs. 15,000/- is taken as the basis for grant of compensation, the further deduction of 1/3rd for personal expenses by the deceased should not be made therefrom. This Court in holding so relied on the judgment of Supreme Court in *Manju Devi and Anr. v. Musafir Paswan and Anr.* 2005 RAR 105 (SC) and observed that the Supreme Court in that case also did not make any deduction. A similar view was taken by this Court again in *Naviya and Ors. supra* where the income of the deceased was computed on the basis of minimum wages payable at the relevant time as per

the rate of Rs. 70/- per day prescribed by the Government. It was observed that monthly income on the basis of such daily wages would come to Rs. 2,100/- per month, one third of such amount could not be spent by the deceased as a personal expenses. The deduction of 1/3rd was therefore not permitted. In *Hanuman and Anr. v. United India Insurance Co. Ltd. and Anr.* MACD 2007 (1) (Raj.) 616, similar view has been taken by co-ordinate bench of this Court. In the facts of the case, I find herein that when the amount of Rs. 15,000/- per month was taken as the notional income of the deceased who was 25 years old at the time of death, deduction of 1/3rd amount for self expenses should not have been made. Even if the landed property and share of the deceased therein is not taken as me basis for taking as the proof of his higher income, the fact remains that the deceased would have in all probabilities earned more amount in course of time, therefore, when computation of compensation is made on notional income basis, taking that factor into account further deduction even on that minimum amount ought not to be made, particularly when already the amount of income is on reduced scale.

6. However, let me now advert to the argument of the appellant-insurance company that since the owner of, the vehicle has not appeared before the Tribunal to prove the fact that the driver had valid licence at the time of accident, an adverse inference would be drawn against him and on that basis, the liberty should be granted to the insurance company to recover the amount of compensation from the owner. In the present case, it appears that though the insurance company requisitioned the services of the Surveyor according to whom, the driving licence produced by the driver was fake and a certificate was also obtained by him from RTO, Raipur, but neither the Surveyor was produced in evidence, nor was the RTO, Raipur or any of his representative, was made to appear before the Tribunal to prove the correctness of that certificate. The record reveals that the insurance company then submitted an application before the Tribunal under Order 26 Rule 4 of CPC for examining RTO on commission. In spite of grant of several opportunities, the insurance company even failed to deposit the cost of the Commissioner and ultimately such prayer was also not granted. It is in the context of such facts that this Court is called upon to examine the applicability of cited judgments. *Glan Chand, supra* was a case wherein the Tribunal and the High Court had recorded a positive finding that the driver was permitted to drive the vehicle by the owner, the insured, knowing the fact that the driver was not having driving licence. In those facts, it was held that once the owner of the vehicle did not step into the witness box to prove his case, an adverse inference has to be drawn against him to the fact that the vehicle was handed over by him to a driver not having driving licence. In *Laxmi Naran Dhut, supra*, in the face of evidence brought before the Court that the licence of the driver was fake, it was held that in case of third party risk, insurance company has to indemnify the amount and if so advised, recover the same from the insured.

7. In the present case, however, the onus was on the insurance company to

prove that the driving licence produced by the owner was fake and when existence of driving licence was not denied and no evidence to this effect was produced and even the cost of Commissioner not deposited, that liberty on the basis of mere non-appearance of the owner in the witness box in the facts of the present case, cannot be granted, particularly when no such inference has in this case been drawn by the Tribunal.

8. In the result, the appeal preferred by the claimant Mukti and others is allowed and it is directed that the payment of compensation to the claimants shall be made on the total annual notional income of Rs. 15,000/- multiplied by the multiplier of 18, in this manner an amount of Rs. 1,35,000/- awarded to the claimant shall be liable to be doubled to Rs. 2,70,000/- with compensation awarded under other heads being maintained.

9. It is further directed that the appellant shall be entitled to Interest @ 7.5% on the enhanced amount from the date of filing of the claim petition till payment. The appeal preferred by the insurance company is however dismissed.