

(2004) 12 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Special Appeal (C) No. 49 of 2003

Munna Parveen (Smt.) and Others

APPELLANT

Vs

Bhanu Bhai and Others

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2006) 1 RLW 507

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Rajesh Panwar, for the Appellant; U.C.S. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. At the request of the learned Counsel for the parties, the preparation of paper-book is dispensed with.

3. The appeal is directed against the order of the learned Single Judge dated 6.1.2003 by which the application u/s 5 of the Limitation Act and the appeal against the award of the Motor Accident Claims Tribunal, Rajsamand dated 4.12.1999 was dismissed as barred by time by holding that any such sufficient cause which could have prevented the appellants from filing the appeal within limitation has not been shown.

4. The appellants are widow and minor children of deceased Safi Mohammed. As per the fact found by the Tribunal, Safi Mohammed has died as a result of an accident which took place on 10.3.1994 while the scooter, on which the deceased Safi Mohammed was travelling, was hit by a Metador. The Tribunal has found that the said accident was caused due to rash and negligent driving by the driver of the Metador, which was insured with the respondent No.2, the Oriental Insurance Company Limited, Udaipur. The deceased at the time of his death was earning Rs.3,000/-. The eldest son of the deceased is a minor of 11 years of age. By

reducing the amount estimated to be spent by the deceased on himself, the monthly expenditure on the family was considered to be Rs. 1,750/-. With these findings, by applying a multiplier of 8, the compensation of Rs. 1,68,000/- was estimated towards pecuniary loss, loss of consortium was allowed at Rs. 15,000/-, loss of scooter was allowed at the deceased after he met with the accident. Thus, a total compensation of Rs.2,08,000/- was awarded.

5. Having considered the application u/s 5 of the Limitation Act and the contentions raised before us, we are of the opinion that the appeal which was barred by 27 days only ought to have been admitted by condoning the delay as the claimants- appellants were the minor children of the deceased less than 11 years of age represented by the widowed mother, who too is an illiterate lady and apparently the award suffers from an apparent error in applying the multiplier of 8 only in a case where the deceased was below 40 years of age contrary to the principles laid down by Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and the judgment under appeal deserves to be set aside.

6. At this juncture, it is stated by the learned Counsel for the parties that since the accident took place almost 10 years before and the question involved in the present appeal is only to the extent of correct application of the multiplier on the basis of the principles enunciated by the Hon''ble Supreme Court and all other facts are admitted and there is no dispute about these, the appeal itself may be heard on merit because remitting back the appeal to the learned. Single Judge will cause further delay in extending relief to the claimants.

7. In the facts and circumstances, we allow this request of the learned Counsel for the parties and heard the appeal itself filed against the award of compensation on merits.

8. Apparently, as per the ratio laid down by the Hon''ble Supreme Court in Susamma Thomas's case, the Second Schedule to the Motor Vehicles Act, 1988 provides a rough a ready guideline for applying an appropriate multiplier even in the cases where the accidents had occurred before insertion of this Schedule In the Act with effect from 14.11.1994. This case also relates to an accident which had occurred on 10.3.1994 before the Insertion of Schedule Second In the Act of 1988 for applying the appropriate multiplier.

9. The aforesaid admitted facts found by the Tribunal are that the deceased at the time of accident was not 40 years of age, his monthly income was Rs.3000/-. Thus, applying the formula as detailed in Schedule Second to the Act of 1988, a multiplier of 16 is to be applied to the amount of annual income of the deceased and from that amount 1/3rd is to be reduced in consideration of which the victim spent for maintaining himself when he had been alive. Since, the deceased was earning Rs.3000/- per month according to the finding of the Tribunal his annual income came to Rs.36,000/-. The gross amount which is to be determined as compensation in the circumstances by applying the multiplier of 16 is

Rs.5,40,000/-. After reducing 1/3rd income as estimated expenditure incurred by the deceased on himself i.e. Rs. 1,80,000/- the net amount to be awarded as compensation works out to be Rs.3,60,000/-. Apparently, the Tribunal has committed an error in not noticing the principles laid down by the Hon"ble Supreme Court and in applying the multiplier of 8 only.

10. Accordingly, the award of compensation made by the Motor Accident Claims Tribunal, Rajsamand is held to be inadequate and the same is enhanced to Rs.3,60,000/- from Rs. 1,68,000/-. The award of compensation on other grounds is maintained. On the enhanced amount of compensation, interest at the rate of 9% is allowed with effect from the date of filing of the appeal.

11. In terms of the aforesaid, the enhanced amount of compensation shall be disbursed and distributed in the same manner as has been awarded by the Tribunal amongst the dependents-claimants of the deceased.

12. The appeal is accordingly allowed.

13. No costs.