

(2009) 11 RAJ CK 0044
In the Rajasthan High Court

Natioanl Insurance Company Ltd.

APPELLANT

Vs

Shri Hanuman Ram and Others

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Citation : (2010) 1 WLN 67

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard learned Counsels.

2. This appeal has been filed by the Insurance Company being aggrieved by the award dt. 21.09.2007 of the MACT in MACT Claim No. 55/2006 for the death of one Ram Niwas, aged 25 years. The Tribunal has granted compensation to the tune of Rs. 2,65,000/-.

3. Learned Counsel for the appellant -Insurance Company Mr. Jagdish Vyas submitted that the accident took place on 20.04.2004 at 10:45 PM while two persons Ram Niwas and Hastimal were travelling on the motor cycle RJ 01-14 M-7925, the Marshal Jeep No. RJ 10-C-2397 hit the said motor cycle from the back side and on account of the said accident these two young persons lost their lives. One Ajit, whose motor cycle was also hit by the same jeep, also later on died in the hospital.

4. For the death of Ram Niwas, his father Hanuman Ram filed claim petition No. 55/2006 and claimed compensation of Rs. 29.51 lacs.

5. The learned Tribunal after discussing the relevant evidence found that the accident had taken place on account of rash and negligent driving by the respondent No. 3-Kishan Lai of the said jeep and death of both these persons was caused by the said accident. The deceased Ram Niwas was engaged in the business of some motor mechanic shop doing the work of dynamos and was also

doing the work on the agricultural field of his father and other misc. jobs. The Tribunal has taken the monthly income only at Rs. 2,500/- for the said deceased Ram Niwas and after deducting 1/3rd for his personal expenditure, had applied the multiplier of 13 to arrive at the compensation as aforesaid.

6. The learned Counsel for the appellant-insurance company has raised two fold submissions; (i) that MTO report (inspection of motor cycle) discloses that the front side of both motor cycles were damaged whereas in claim petition and evidence before the Tribunal, it came before the Tribunal that said motor cycles were hit from the back side. He, therefore, raised a doubt over the happening of the accident itself, (ii) Secondly, the learned Counsel for the appellant insurance company submitted that there was no cogent evidence for arriving at monthly income of Rs. 2,500/- for the said deceased Ram Niwas since dependent was only his father, the deduction of 1/3rd of the net income was also less and at least 50% deduction towards personal expenditure ought to have been considered by the learned Tribunal. He relied upon para 15 of the decision of Hon'ble Supreme Court in case of Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. MACD 2009 (SC) 353.

7. Both these contentions are vehemently opposed by the learned Counsel for the claimant, who submits that the Tribunal has on the other hand erred in taking into account the monthly income only Rs. 2,500/- and has not taken into account any increase in the future income of the said deceased, who died at young age of 25 years. He also submitted that the father being the only dependent person and aged man of 55 years lost his only son and, therefore, reduction of 1/3rd for his personal expenditure was sufficient. He also submitted that the said son used to help dependent father in his agricultural operations and, therefore, the compensation determined by the learned Tribunal at Rs. 2.65 lacs is rather minimal and does not require any reduction at the instance of insurance company in the present appeal.

8. I have heard learned Counsels at length and perused the judgment cited at the Bar. This Court finds no force in the contentions raised by the learned Counsel for the appellant-insurance company. As far as the finding of accident is concerned, merely because of the damage shown is on the front side of the motor cycle, it does not disprove the happening of the accident itself. Admittedly the said jeep insured with the appellant-insurance company was being driven in rash and negligent manner by the respondent No. 3-Kishan Lai, his statements before the Tribunal are of shaky nature and have been found to be prima facie tissues of lies. Having caused the accident on the spot, he did not even take care to take the injured persons to the hospital, who admittedly died on account of the said accident. The finding of the Tribunal that claimants have proved the accident with the help of oral evidence of at least 3 witnesses has not been rebutted by the insurance company in any manner. The damage to the motor cycle and MTO report could be caused even after such motor cycles were hit from the back side. Therefore, this finding does not require any interference.

9. As far as compensation amount is concerned, this Court is of the opinion that the compensation of Rs. 2.65 lacs arrived at by the Tribunal after taking the net monthly income of Rs. 2,500/- is rather conservative or minimum as the young man of 25 years in a family of two brother and his father, lost his life on account of said accident. The income of Rs. 2,500/- taken is minimum possible income taken by the Tribunal and the Tribunal has also not taken into account the possibility of increase in hi future income in his later life. Be that as it may, since there is no cro i appeal of the claimant for enhancement, this Court is not inclined to grant the enhancement of compensation. At the same time, this Court is of the opinion that the compensation awarded by the Tribunal is just and fair does not require any reduction.

10. The appeal of the Insurance Company is thus, found to be devoid of merit. The same is accordingly dismissed. No costs.