
(2013) 10 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2386 of 2013

National Insurance Co. Ltd.

APPELLANT

Vs

Pushpa and Others

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 1 WLN 341

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Vizzy Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The appellant, insurance company, is aggrieved by the award dt. 03.04.2013 passed by the MACT & ADJ, Kekri, District Ajmer, whereby the learned Tribunal has granted a compensation of Rs. 27,35,744/- alongwith an interest @ 6% per annum from the date of presentation of the claim petition, i.e. from 27.11.2010, till actual payment of the compensation amount. The brief facts of the case are that the claimants-respondents, filed a claim petition stating therein that on 23.10.2010 when Kamlesh Mewara was going on foot by the side of the road, he was hit by a Ford Ikon Car No. RJ06-CA-0186 being driven by the appellant No. 8 in a rash and negligent manner. Consequently, Kamlesh Mewara died. By award dt. 03.04.2013, the learned Tribunal awarded compensation to the claimants-respondents, as stated above.

2. The learned counsel for the appellant has raised the following contentions before this Court: firstly, the learned Tribunal has erred in relying upon the Income Tax Return (Ex. 18) in order to assess the possible income of Kamlesh Mewara. For, according to the claimants-respondents, Mr. Kamlesh Mewara was engaged in two different businesses, namely in the business of explosive in Bhinai, District Ajmer, and in the business of tractor boring in Maharashtra. However, the Income Tax Return submitted by him, prior to his death, does not

reveal that he was deriving his income from these two businesses. In fact, according to the Income Tax Return, he was engaged in the business of selling and buying certain commodities. But the said commodities have not been revealed by him. Thus, the Income Tax Return does not support the plea raised by the claimants that Kamlesh Mewara was engaged in two different businesses at two different places.

3. Secondly, Pushpa (A.W. 1), the wife of the deceased, in her cross-examination, clearly admits that she does not know as to who had filed the Income Tax Return. She further admits that prior to filing of the Income Tax Return (Ex. 18), her husband had neither filed any Income Tax Return, nor was he an income tax payee. She further admits that she does not know the amount that he earned from both the businesses mentioned above. She further admits that she does not know the source of his income as shown in the Income Tax Return as Rs. 1,59,630/-. Therefore, she is totally ignorant both about filing of the Income Tax Return, and about existence of the businesses carried out by her late husband.

4. Thirdly, according to the Explosive License issued by the Government of India to Kamlesh Mewara, he could not have sold the explosives to anyone. He was merely licensed for possession and use of explosive. Thus, he could not have shown the fact that he was engaged in illegally selling the explosive and making his money. It is for this reason that he does not reveal in his Income Tax Return the commodities which were being sold by him.

5. Fourthly, as far as the tractor boring business is concerned, again Pushpa (A.W. 1) admits in her cross-examination that she does not know as to how much her husband was earning from the said business in Maharashtra. Therefore, the Income Tax Return filed by Kamlesh Mewara does not substantiate the pleas raised by the claimants.

6. Fifthly, even in the passbook submitted by the claimants there is an entry of Rs. 2,50,000/-. However, there is no explanation for the said entry. In fact, the said entry has not been utilized by the claimants to further their claim.

7. Sixthly, the learned counsel has contended that there are two judgments of the Hon'ble Supreme Court, of equal Benches, namely the case of Reshma Kumari and Others Vs. Madan Mohan and Another, and the case of Rajesh and Others Vs. Rajbir Singh and Others, In the former case the Hon'ble Supreme Court is of the opinion that the Tribunals are bound by the principles laid down by the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, in Para Nos. 30, 31 and 32. In the latter case, the Apex Court is of the opinion that since in Sarla Verma's case no reasoning was given for denying the prospect of increase in salary in future to certain categories of persons, the said denial cannot be applied. Therefore, according to the learned counsel, the learned Tribunal could not have granted the benefit of prospect of future increase in salary to the claimants-respondents.

8. Lastly, relying on the case of Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , the learned counsel has contended that the Tribunal should be concerned only with the income of the deceased on the date of accident. Therefore, it is not justified in granting the benefit of prospect of increase in future income. However, in the present case, the Tribunal has granted the benefit of prospect of increase in salary in future.

9. Heard the learned counsel for the appellant and perused the impugned award.

10. Undoubtedly, a proceeding before the Tribunal is in the nature of a summary proceeding where while assessing the loss of dependency, the learned Tribunal is basically concerned with the income of the deceased. Therefore, the learned Tribunal is not required to adjudicate upon the legality and veracity of an Income Tax Return. Even then in the present case, the learned Tribunal had written a letter to the Additional Income Tax Commissioner, Range-II, Ajmer Ward inquiring whether Kamlesh Mewara has actually filed the Income Tax Return on 30.07.2010 or not? By letter dt. 18.02.2013, the Additional Commissioner had verified the fact that, indeed, Kamlesh Mewara had filed the said Income Tax Return. The said return, in fact, was filed on 30.07.2010 i.e. three months prior to his death. The claimants had produced the said Return and the Bank Passbook in order to show the income earned by her late husband.

11. The Tribunal is expected to be alive to the reality of this country where semi-literate women may not know of the details about the nature of business carried out by their husbands. According to Pushpa (A.W. 1), she had studied only till sixth standard. According to her, her husband carried out business at two different parts of the country, one within District Ajmer, and the other in Maharashtra. She being a housewife, is primarily concerned or would be concerned with running the household from the income given to her by her husband. Ordinarily, housewives do not take any interest in the business of their husbands. They may not even be aware of the nature of business, the total income and the expenditure incurred by the business or even by the Income Tax Returns being filed by the husband. After all, such details of professional life of the husband do not, generally, concern a housewife. Therefore, if she denies in her cross-examination the fact that she is unaware as to who had submitted the Income Tax Return, on what basis her husband has shown his income to be Rs. 1,59,000/- and even if she denies in her cross-examination that she is not aware about the business carried out by him in Maharashtra, a place too far from Ajmer for her to worry about, it would not dilute her case that her husband was a businessman, that he had certain income and that it is he who was the bread earner in the family upon whom the claimants were financially dependent.

12. Moreover, the Tribunal could not have entered into the issue as to what commodity was being sold by Kamlesh Mewara in order to earn his income. Even if he was illegally selling the explosives, although there is no evidence to this effect adduced by the insurance company, even if for the sake of argument it is taken that he was engaged in an illegal transaction, even then the appellants

cannot deny the fact that the deceased was earning an income. The total focus of the Tribunal is to decipher the possible income earned by the deceased through legal or even illegal means. Therefore, the contention raised by the learned counsel that the income shown in the Income Tax Return may have been through clandestine business would still not be sufficient to deprive the claimants of the compensation.

13. The learned counsel had also raised the plea that the Income Tax Return filed by Kamlesh Mewara does not bear his signature. But the fact remains that the Income Tax Return was duly verified by the Additional Commissioner of Income Tax. Therefore, it cannot be claimed by the Insurance company that the said document is a forged one. Hence, the issue whether it bears the signature of the income tax returnee or not is irrelevant.

14. Even if Pushpa (A.W. 1) could not explain a particular entry or all the entries in the passbook belonging to her late husband, again it would not dilute the veracity of her testimony. As stated above, a housewife may not take any interest in the financial transactions of her husband.

15. The learned counsel has relied on the case of Bijoy Kumar Dugar (supra) in order to plead that the learned Tribunal ought not to have given the benefit of prospect of increase of salary in future to the claimants. However, subsequent to the decision in the case of Bijoy Kumar Dugar (supra), in the case of Sarla Verma (supra) the Hon''ble Supreme Court has expressed its view that a claimant would be entitled to the benefit of future prospect of increase in income except those who are self-employed or are daily-rated workers. But even this observation made in the case of Sarla Verma (supra) has now been dissented by the Apex Court in the case of Rajesh & Ors. (supra). In the case of Rajesh & Ors. (supra), the Hon''ble Supreme Court has expressed its opinion that since no reason was given by the Court in carving out an exceptional class of persons, the claimants cannot be denied the benefit of prospect of future increase in income merely because they fall within the exceptional class.

16. Although it is true that the case of Reshma Kumari & Ors. (supra) and the case of Rajesh & Ors. (supra), prima facie, may appear to be contrary to each other, but the fact remains that both the cases have been decided by the Benches of equal strength namely the Full Bench. Whereas the case of Reshma Kumari & Ors. (supra) was decided on 02.04.2013, the case of Rajesh & Ors. (supra) was decided on 12.04.2013. According to the rule of precedent, in case there are two Benches of equal strength, and in case the latter Bench disagrees with the decision of a prior Bench, in that case the opinion expressed by the later Bench is to be preferred than the opinion of the prior Bench. Thus, this Court is bound to follow the opinion as expressed by the Apex Court in the case of Rajesh & Ors. (supra). After all, the case of Rajesh & Ors. (supra) is the later judgment.

17. The learned counsel for the appellant has also relied on the case of Union of India (UOI) and Others Vs. S.K. Kapoor, wherein the Hon''ble Supreme Court has

expressed its opinion that in case a later Bench of equal strength does not agree with the decision of a former Bench, the proper course would be for the subsequent Bench to refer the case to a Larger Bench. There can be no issue about the principle laid down by the Hon''ble Supreme Court on this point. However, simultaneously the rule of precedent are also alive to the fact that, at times, the proper course may not be followed by the Court of law. In order to meet out such an eventuality, the rule is that the latter judgment should be followed in case the former and the latter Benches are of equal strength. Thus, this Court has no option but to follow the judgment and the opinion expressed by the Hon''ble Supreme Court in the case of Rajesh & Ors. (supra).

18. The Motor Vehicles Act is a social beneficial piece of legislation which tries to ameliorate the condition of a family that is suddenly struck by a tragedy of having lost the bread earner of the family. While assessing compensation for the benefit of the claimants, different factors have to be kept in mind. The fact that salary/income is bound to increase cannot be ignored by the learned Tribunals. In case the deceased would have survived, naturally, his income would have increased over a period of years. Thus, even this loss suffered, due to tragic end of the bread earner, would have to be considered as a relevant factor. Thus, this Court does not find any irregularity or illegality in the learned Tribunal granting the benefit of prospect of increase in income in future to the claimants. For the reasons stated above, this Court does not find any merit in this appeal. It is hereby, dismissed. The stay application is also dismissed.