

(2009) 03 RAJ CK 0041
In the Rajasthan High Court

National Insurance Co. Ltd.

APPELLANT

Vs

Ram Dayal Sethi and Others
 Ram Dayal Sethi and
Others Vs Rajkumar and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 03 RAJ CK 0041

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Since both these appeals arise out of the same award, namely award dated 16-3-2007 passed by Additional District Judge (Fast Track) No. 6, Jaipur City Jaipur (`the learned Tribunal" for short), whereby for the death of Labh Chand Jayaswal the learned Tribunal has awarded a compensation of Rs. 2,02,000/- to claimants, both these appeals are being decided by this common judgment. While the first appeal has been filed by the Insurance Company, the second has been filed by the claimants for enhancement of compensation.

2. The brief facts of the case are that on 8-3-2004 Labh Chand was going on his scooter, bearing No. RJ-14-24M-9700, towards his house. He was followed by an auto-rickshaw bearing registration No. RJ-14-1P-2803. While both the vehicles were going on the correct side of the road, near Nagtali Poolia a truck, bearing registration No. HR-47-3925, being driven in rash and negligent manner hit the auto-rickshaw and then hit the scooter. Consequently, Labh Chand died on the spot. Since the claimants, which included his parents, his brothers and his two sisters, were totally dependant on Labh Chand, they filed claim petition before the learned Tribunal. In order to prove their case, they examined five witnesses and exhibited twenty documents. The Insurance company neither examined any witness, nor exhibited any documents. After going through the oral and documentary evidence, the learned Tribunal has granted the compensation as aforementioned.

3. Ms. Archana Mantri, the learned Counsel for the Insurance Company, has raised two contentions before this Court: firstly that since there is no documentary proof that Labh Chand was earning Rs. 4500/- per month, his income as assessed by the learned Tribunal, is on the higher side. In the absence of documentary proof, the learned Tribunal should have assessed his income on the basis of minimum wages prevalent at the relevant time. At the relevant time Labh Chand would have been entitled only to Rs. 81/- per day. Hence, the basis for calculating the loss of income is misplaced. Secondly, there is no evidence on record to show that sisters of deceased, respondents No. 6 and 7, were dependant upon him. Therefore, they are not entitled to any compensation.

4. On the other hand, Mr. Ram Singh Rathore, the learned Counsel for claimants, has argued that income of the deceased has been assessed taking into account the future prospect. According to claimants Labh Chand was working as labourer of Gem-stones and was earning between Rs. 6000 to 8000/- per month. Since no documentary evidence was produced to substantiate this claim, the learned Tribunal had taken his daily wages as Rs. 150/- and calculated his salary to be Rs. 4500/- per month. Although at the relevant time the daily wages were Rs. 80/-, but the learned Tribunal has taken the daily wages as Rs. 150/- keeping in mind the future prospect of increase of salary of Labh Chand. Therefore the basis of assessing the income of deceased is justified and legal. Secondly, according to the claimants both the sisters, being widowed, were living with Labh Chand his parents. Therefore, they were financially dependant on Labh Chand. Hence, the Tribunal has rightly granted compensation in their favour.

5. Heard learned Counsel for the parties, examined the material available on record and perused the impugned award.

6. According to the learned Tribunal there is some contradiction in testimony of witnesses with regard to income of Labh Chand. While A.W.1, Shanti Devi, claims that her son was earning Rs. 8000/- per month as labourer of Gem-stone, A.W.3, Ram Dayal, claims that his son was earning Rs. 6000/- per month. Moreover, although a salary certificate, Ex.18, has been submitted, the learned Tribunal has not relied on the said certificate on the ground that it has not been proven by anyone. The learned Tribunal has assessed the income of deceased as Rs. 150/- per day. Since at the relevant time, according to minimum wages, Labh Chand would have earned Rs. 81/- per day and taking the future prospect of increase in income the assessment of income of deceased by the learned Tribunal as Rs. 150/- per day is certainly justified. Hence, the assessment of income of deceased by the learned Tribunal is legal and valid.

7. There is sufficient evidence in the form of testimony of A.W.1, Shanti Devi, and A.W.3, Ram Dayal, that respondents No. 6, Smt. Vinod, and respondent No. 7, Smt. Meena, sisters of Labh Chand, were widows and were staying with their parents and with Labh Chand, along with their children. Thus, the widowed sisters were certainly dependant upon the income of Labh Chand. Hence, the learned Tribunal was justified in awarding compensation to them.

8. It is also pertinent to note that although two brothers were arrayed as claimants in the claim petition, but the learned Tribunal has not awarded any compensation to them on the ground that they were financially independent and were living separately from Labh Chand. Since, the learned Tribunal has meticulously discussed the evidence available on record, the award suffers neither from any perversity, nor from any illegality. Hence, there is no force in the appeal filed by Insurance Company. Since, the evidence has been discussed meticulously by the learned Tribunal, since the correct parameters, such as multiplier and income, have been applied by the learned Tribunal, the award is legally correct. Thus, there is no force in the appeal filed by the claimants for enhancement.

9. For the reasons mentioned above, the appeals are dismissed. There shall be no order as to costs.