(2005) 09 RAJ CK 0003

In the Rajasthan High Court

National Insurance Co. Ltd. APPELLANT

Vs

Vinod Choudhary and Others RESPONDENT

Date of Decision : 26-09-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 170

Citation : (2007) ACJ 390

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Judgement

N.P. Gupta, J.—The appeal comes up for admission. In view of the small controversy, at the request of the learned Counsel for the parties, the appeal is finally heard at this stage itself.

2. Heard learned counsel for the parties.

3. It is contended by the learned counsel for the appellant that the appellant was granted permission u/s 170 of the Motor Vehicles Act, which fact is not disputed by the learned counsel for the claimants-respondents. On the strength of this, it is contended that the compensation assessed by learned Tribunal is excessive.

4. In this regard two submissions have been made. First being, that learned Tribunal was in error in assessing the income of the deceased to be Rs. 5,000 per month, inasmuch as, there is no reliable evidence in this regard on record and that deceased was said to be working as a Manager in the video parlour, while operating video parlour has already been declared illegal in Rajasthan and, therefore, it cannot be believed that he was working as a Manager in the video parlour in the year 2003, apart from the fact that employer himself has not appeared in the witness-box to prove the income. The other submission made is that the learned Tribunal has employed multiplier of 17 as per Second Schedule appended to the Motor Vehicles Act, but at the same time, while assessing the dependency, has enhanced the income by 50 per cent, considering future prospects, which is bad, inasmuch as, if the multiplier is employed, as per

Second Schedule, then it is settled law that the income of the deceased, as he was earning at the time of death alone, is to be taken into account.

5. Learned Counsel for the claimants-respondents, on the other hand, submitted that the income of the deceased is clearly established on record, inasmuch as, the claimants have produced the certificate, Exh. 16, about the salary of the deceased and there is nothing to throw doubt on the reliability of the certificate nor there is any evidence led on the side of defendants in rebuttal. The other submission made is that there is no error on the part of the learned Tribunal in assessing the dependency and award is required to be upheld as such.

6. I have considered the submissions. In my view, in the circumstances of the case, the claimants can very well be said to have proved the income of the deceased to be Rs. 5,000 per month. It has been deposed by the claimant that out of this income, the deceased was paying annual premium of Rs. 20,000. I have gone through the statement of the claimant, though she has been cross-examined about the income of the deceased, but then, even after reading of the entire cross-examination, in my view, it cannot be said that the testimony of the claimant could be successfully shaken. Nothing has been put to her regarding genuineness or correctness of the salary certificate, Exh. 16. Thus, considering the totality of circumstances, I do not find any error, so far as the finding of learned Tribunal, assessing the income of the deceased to be Rs. 5,000 per month is concerned.

7. Coming to the calculation of compensation, in my view, in view of the judgments of Hon''ble Supreme Court including that in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , which all have been considered and followed by this Court in Union of India (UOI) and Another Vs. Jaishree and Others, if the multiplier as per Second Schedule is employed, then the income of the deceased at the time of death only, is to be taken and no increase can be made on the consideration of future prospects of increase. Thus, to this extent, the assessment of compensation is required to be interfered with. The income of the deceased is established to be Rs. 5,000 per month, which comes to Rs. 60,000 per year, from out of that deducting 1/3rd for personal expenditure, the net dependency comes to Rs. 40,000 per year and employing multiplier of 17 the compensation comes to Rs. 6,80,000.

8. Accordingly, the figure of compensation assessed by learned Tribunal, being Rs. 10,20,000, is required to be and is reduced to Rs. 6,80,000. All other amounts awarded by the learned Tribunal and the conditions imposed are maintained.

9. The appeal is, thus, partly allowed. The amount of compensation assessed at Rs. 10,20,000 is reduced to Rs. 6,80,000 while maintaining all other amounts and conditions. The parties shall bear their own costs of this appeal.

