(2006) 04 RAJ CK 0011

In the Rajasthan High Court

National Insurance Company Ltd. APPELLANT

Vs

Geeta Bai and Others RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2006) 3 ACC 286

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

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The appellant Insurance Company is challenging the award dated 9.11.2005 passed by the Motor Accident Claims Tribunal, Bundi whereby the Tribunal has awarded Rs. 3,96,000 to the claimant-respondents for the death of Bhagwan Meena.

2. The brief facts of the case are that on 28.2.2004 Bhagwan Meena and others were travelling in a jeep, bearing Registration No. RJ 20 T 0940, from Kota to Bundi on National Highway. When they reached near Badgaon, a truck, bearing Registration No. PB-4B-9982, being driven rashly and negligently, collided with the said jeep. Consequently, Bhagwan Meena and one smt. Jamila died on the spot and one Banshilal sustained i`njuries. Left without the bread earner, wanting some compensation for the sudden death, the respondentNos. 1 to 7 filed aclaim petition before the Tribunal. Since three different claim petitions were filed arising out of the same accident, the learned Tribunal by a common award was pleased to award the compensation as aforementioned. Since the appellant Insurance Company is aggrieved by the said award, it has filed the present appeal before us.

3. Mr. J.K. Singhi, the learned Counsel for the appellant has raised three contentions before us. Firstly, that the Tribunal has imposed a penal interest in case the compensation is not paid within the stipulated period. According to the learned Counsel, there is no provision in the Motor Vehicles Act, 1988 (henceforth to be referred to as ''the Act'' for short), which empowers the

Tribunal for imposing a penal interest. Secondly, since it was a head on collision between two vehicles, the contributory negligence on the part of both the vehicles should have been presumed by the Tribunal. Such a presumption has not been drawn. Therefore, the Tribunal has erred in imposing the liability solely on the Insurance Company of the truck. Thirdly, without any evidentiary basis, the income of the deceased has been decided by the Tribunal. The income decided by the Tribunal is on the higher side. Hence, the computation of the compensation is misplaced.

4. On the other hand, Mr. Sudarshan Laddha, the learned Counsel for the claimant-respondents, has fairly conceded that there is no provision for imposition of the penal interest in the Act. However, he has contended that there is no legal presumption that in case of a head on collision, contributory negligence of the two vehicles should be presumed by the Tribunal. Although the respondent No. 1 had claimed in her testimony that her deceased husband was earning Rs. 10,000 per month, the Tribunal has taken his income to be only Rs. 3,000 per month, considering the fact that he was a labourer. Therefore, the assessment of the income was not on the higher side. He has, thus, supported the impugned award.

5. We have heard the learned Counsels for both the parties and have perused the impugned award.

6. It is, indeed, a settled principle of law that a penal interest cannot be imposed by the Tribunal as no such power has been given to the Tribunal by the Act. In the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, , the Hon''ble Supreme Court has clearly held as under:

Though Section 110-CC of the Act (corresponding to Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of compensation together with interest payable thereon virtually amounts to the imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

7. Thus, the Tribunal was not justified in imposing a penal interest of 9% per annum in case the compensation award was not satisfied within two months.

8. There is no presumption in the Act that in case a head on collision takes place between two vehicles, it shall be presumed that there is a contributory negligence on the side of drivers of both the vehicles. When Mr. J.K. Singhi was asked to prove his contention about the existence of such a presumption, he could neither show any relevant provision of law nor cite any relevant case law on this point. He could not even substantiate his contention either by the site plan prepared by the police or by the charge-sheet submitted by the police against the driver of the offending truck. Since there is neither any evidentiary basis nor a legal presumption, the Tribunal was certainly justified in concluding that the negligence e was solely committed by the driver of the truck. Such a conclusion is fortified by the oral evidence of the witnesses. Therefore, the second contention raised by the learned Counsel for the appellant is unwarranted.

9. Considering the fact that the deceased was a labourer, the Tribunal has rightly concluded that according to the Minimum Wages Act, he certainly would have earned Rs. 50 per day for his labour. While granting the benefit of future loss of income, the Tribunal was justified in doubling the income to Rs. 100 per day and concluding that the deceased would have earned Rs. 3,000 per month. Taking 2/3rd of Rs. 3,000 and multiplying with the multiplier of 16, the Tribunal has legally and validly granted a compensation of Rs. 3,96,000 in the category of loss of dependency. It has also validly granted a further compensation of Rs. 12,000 for the expenses incurred in the cremation and other social functions. Therefore, as far as the compensation is concerned, the award is certainly reasonable and just.

10. In the result, we quash and set aside the condition of imposition of 9% penal interest as imposed by the Tribunal, and confirm the rest of the award passed by the Tribunal. The appeal is partly allowed to this limited extent.