
(2007) 10 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3 of 1996

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Uchab Kanwar and Others

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2008) 1 WLN 48

Hon'ble Judges : Manak Lall Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—This appeal is directed against the judgment and Award dt. 30.08.1995 passed by the Judge, Motor Accident Claims Tribunal, Nimbahera in MACT Case No. 109/92 whereby the learned Tribunal has allowed the claim petition and has awarded a compensation of Rs. 6,85,200/- plus interest @ 12% per annum from the date of filing of the claim petition i.e. 23.10.1992 in favour of claimants/respondents Nos. 1 to 6 and against the non-claimant No. 2 and 3.

2. Briefly stated the facts of the case are that a claim petition was filed by the claimants/respondents No. 1 to 6 alleging therein that on 01.05.1992 at about 6? O clock in the morning an accident took place between two trucks nearly one Km away from Mangalwad Crossing. At the time of accident, Shivnath Singh (deceased) was travelling in truck No. RSH-7055. He was aged 28 years and was engaged in the business of selling water pumping set, spare parts etc. at Malgalwad Crossing in the name of M/s. Shiv Traders. It was further stated in the claim petition that the deceased was the only son of his parents. The truck No. RSH-7055 in which the deceased was travelling was being plied at a very low speed and was being driven in left side of road. At that time, Truck No. RNE-5303 was being driven by non-claimant No. 1, which was coming from opposite side in a rash, negligent way and in a high speed after overtaking one another truck, hit truck No. RSH-7055 as a result whereof the deceased sustained injuries and finally succumbed to the injuries. It was further stated that the deceased was

earning Rs. 5000/- per month and out of that, Rs. 3000/- was being spent in favour of the claimants who were dependent upon him. Thus, a sum of Rs. 16,22,500/- alongwith interest at the rate of 18% per annum was claimed as compensation on count of untimely death of Shivnath Singh under different heads.

3. The non-claimant No. 1, driver of the offending truck did not appeal before the Tribunal, as such, ex-parte proceedings were directed to be made against him.

4. Non-claimant No. 2 i.e. the owner of truck filed reply stating therein that her truck was insured with the Appellant-Company. She fastened the entire liability on the Insurance Company and denied the allegation of negligence on the driver of her truck. It was contended that the accident took place on account of negligence of driver of Truck No. RSH-7055 in which the deceased was travelling.

5. A reply to the claim petition was also filed on behalf of the Insurance Company i.e. non-claimant No. 3 wherein the averments made in the claim petition were emphatically denied. It was submitted that highly exaggerated amount under the head of income of deceased has been claimed without disclosing specific source of income. The real version of the accident has been concealed from the notice of the learned Tribunal. It was further stated that as a matter of fact the claim petition itself was not maintainable for the reason that neither the driver nor the owner or the Insurance Company with whom truck No. RSH-7055 was insured and in whom the deceased was travelling as a gratuitous passenger, were impleaded as parties in the claim petition. Thus, the claim petition was liable to be dismissed on count of nonjoinder of necessary parties. Point regarding the driver of truck No. RSH-7055 not having a valid and effective driving licence was also raised. At last it was submitted that if at all liability of the Appellant-Insurance Company is found, then the liability is limited to the provisions of the Motor Vehicles Act. Finally, it was prayed on behalf of the non-claimant No. 3- Insurance Company that the claim petition may kindly be dismissed with costs.

6. On the basis of pleadings of the parties, the following issues were framed:

7. From the side of the claimants, statements of Mohan Singh (AW-1), Narendra Pal Singh (AW-2), Kanhiya Lal (AW-3), Uchab Kunwar (AW-4) and Chunni Lal (AW-5) were got recorded and certain documents were produced and got exhibited. However, no documentary or oral evidence was led from the side of defence.

8. At the conclusion of trial, the learned Judge, Motor Accident Claims Tribunal, Nimbahera vide his impugned judgment and Award dt. 30.08.1995 held the owner of truck and the Insurance Company are jointly and severally liable to compensate the claimants and awarded compensation of Rs. 6,66,200/- in favour of the claimants. Apart from that, a sum of Rs. 10,000/- to the widows and Rs. 3000/- each to the minor children has further been awarded in favour of claimants to be paid by non-claimants No. 2 and 3. It was ordered that the claimants will be entitled to receive interest at the rate of 12% per annum from

the date of filing of the claim petition i.e. 23.01.1992 and a cost of Rs. 1000/- was also awarded.

9. Being aggrieved by the aforesaid impugned judgment and Award, the non-claimant-Insurance Company/appellant has preferred this appeal of setting aside the judgment and award passed against them.

10. After service of notice of appeal, the claimants-respondents No. 1 to 6 also filed cross-objection under Order 41 Rule 22 of C.P.C. for the enhancement of the compensation amount.

11. I have heard learned Counsel for the parties and have carefully gone through the record of the case.

12. During the course of arguments, it was submitted by the learned Counsel for the appellant that the learned Tribunal has not properly appreciated the material available on record and gave erroneous findings on the issues, those are unsustainable and judgment and Award is liable to be quashed. It was contended by the learned Counsel for the appellant that the learned Tribunal has committed a grave error in applying multiplier formula. It was submitted that this formula is based on interest theory; and looking the prevailing bank rate of interest it could not be applied more than 15 times of the net part of the yearly income which the deceased used to spend on his family members but the learned Tribunal had applied multiplier of 36 and determined the quantum of compensation accordingly that is totally against the settled norms and the principle laid down by the Apex Court. Therefore, the amount of compensation determined by the Tribunal is not sustainable and it is required to be quashed. It was also contended that the learned Tribunal has awarded rate of interest 12% per cent on the amount of compensation, that is also on the higher side, that should reasonably be corrected. On the basis of these submissions it was prayed that the appeal may be allowed and the judgment and Award be quashed and/or modified.

13. On the contrary the learned Counsel for the claimant-respondents supported the findings and conclusions drawn by the learned Tribunal and further stated that the learned Tribunal has not properly assessed the monthly income of the deceased. It was submitted that witnesses produced by claimant's side have deposed that he was doing business in the name of Shiv Traders and was earning Rs. 5,000/- to 6,000/- per month. There was no rebuttal of this fact from the other side. The claimants have also produced documents in this respect, which showed that he was having good business and there were chances of expansion of business and more earning, but the learned Tribunal has assessed Rs. 3000/- per month only as his income. The learned Counsel for the respondent in this way on the basis of the cross objection filed by the claimants, prayed that the monthly income of deceased may be reassessed and on that basis the quantum of compensation be redetermined. It was prayed that appeal of Insurance Company may be disallowed and the cross-objection may be

allowed and the amount of compensation be enhanced reasonably.

14. I have considered the rival contentions and perused the finding and conclusion drawn thereon by the learned Tribunal. The main question for consideration in this appeal and the cross-objection is, that whether the quantum of compensation determined by the learned Tribunal requires reconsideration and further is their any scope for enhancing the same.

15. So far as the finding with regard to occurrence of the accident is concerned, I have perused the material available on record and it is revealed that the truck No. RSH-7055 in which deceased was travelling was not at a high speed. That truck was standing in the correct side of the road and the offending vehicle No. RNE-5303 which was being driven by its driver non claimant No. 1 Chand Mohd. in rash and negligent way had caused the accident. Chunni Lal (AW-5) the driver of truck No. RSH-7055 has appeared in witness-box and he has narrated the facts as to how the accident took place and there is no rebuttal from the other side and during the appeal filed by the Insurance Company, the finding has not been disputed. Thus, the finding on issue No. 1 arrived by the learned Tribunal is correct and by virtue of its finding, the offending vehicle No. RNE-5303 which was insured with the appellant which has not been denied, therefore, the appellant has rightly held liable for the payment of compensation.

16. Now I have considered the contentions raised by both the sides with regard to quantum of compensation. The learned Tribunal after assessing the age of deceased at the time of incident as 34 years, deducting it from the average age determining 70 years, took the multiplier of 36 years but this procedure is not sustainable and is not acceptable. The theory of multiplier is based on rage of interest. Considering all these aspects and looking to his age, the multiplier of 17 was reasonable and suitable, which is also corroborated by the Schedule attached to Act. Thus, the conclusion of learned Tribunal was not correct in assessing the quantum of compensation, that requires modification. From the side of claimant on the basis of cross objection, it has been contended that deceased was earning Rs. 5000 to 6000 per month but the learned Tribunal has taken the monthly income of deceased as Rs. 3000/- per month only, but from the material available on record, strong and corroborative evidence have not been produced. In this respect, the witnesses only stated general statements, account book etc. have not been produced. Thus, the monthly income assessed by the Tribunal requires no modification. The Tribunal has rightly assessed monthly income of Rs. 3000/- and after deducting 1/3rd of his income for his own expenses, Rs. 2000/- has been assessed which he could have spent over the family. Thus, taking into consideration the same, his average yearly income comes to Rs. 24,000/- and using the multiplier of 17, it comes out Rs. 4,08,000/- and in addition to this, Rs. 17,000/- is determined for the loss of consortium and Rs. 15,000/- is determined for loss of love and affection, loss of service to parents and guardianship to each of the three minor children and loss of services to parents-mother and father of deceased. Thus, the total comes to

Rs. 75,000/-. In this way, the total amount of compensation comes to Rs. 5,00,000/-, that is reasonable and just. The claimants will be entitled interest @ 12% per annum on the due amount from the date of filing the application till its realization. Further, it is made clear that any amount found to be deposited in the Court or paid to the claimants will be deductible and the interest will be chargeable on the that amount up to that date.

17. The appeal is partly allowed and the cross-objection is hereby rejected. The judgment and Award is partly modified to the extent that the total quantum of compensation has been determined as Rs. 5,00,000/- with interest at the rate of 12% per annum as awarded by the learned Tribunal with above clarification. The cost of Rs. 1,000/- awarded by the learned Tribunal is maintained. The rest of the judgment is confirmed. The remaining due amount after deducting any amount deposited by the appellant be deposited within 30 days from the date of the order. If the amount is not deposited within 30 days from the date of order, then the claimant/respondents will be entitled to recover the same. There shall be no order as to costs of appeal.