

(2005) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 278 of 2000

Navratan Devi (Smt.) and Another

APPELLANT

Vs

Raghuveer Singh and Another

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166

Citation : (2005) 4 ACC 238 : (2005) 4 RLW 2812 : (2005) 4 WLC 363

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : G.K. Bhargiya, for the Appellant; Jagdish Lamba, Dy. G.A., for the Respondent

Judgement

N.K. Jain, J.—These two appeals, one by claimants for enhancing of amount of compensation and another by non claimants for reducing the amount of compensation, have been filed against the judgment/award dated 28.10.1999 passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur, in Motor Accident Claim Case No. 850/1998.

2. The claimant Smt. Navratan Devi and Others filed an application u/s 140/166 of the Motor Vehicles Act, 1988 for compensation in respect of death of late Sh. Giriraj Prasad Ladiwal, who died in an accident, arising out of the motor vehicle, took place on 29.07.1998. A total sum of Rs. 31,85,000/- was claimed as compensation under varies heads in the claims application by the claimants.

3. The non applicants contested the claim application by filing a written reply, wherein it was stated that the income of deceased has been mentioned at a higher side in the claim application. The contributory negligence of the deceased was also pleaded.

4. Learned tribunal framed five issues. Both the parties led oral as well as documentary evidence in support of their case.

5. Learned tribunal vide its impugned judgment dated 28.10.1999 passed an

award of Rs. 9,21,000/- in favour of the claimants and against the non applicants with a condition to make the payment of amount of award within a period of 45 days, failing which the amount of award shall carry interest at the rate of 12% per annum from the date of filing of the claim application i.e., 27.10.1998.

6. Learned Counsel for the claimant appellants contended only one submission about the multiplier of 9 applied in the present case looking to the age of the deceased. He submits that as per finding of the tribunal itself, the deceased was 51-52 years of age at the time of accident. Therefore, as per second schedule corresponding to Section 163A of the Motor Vehicles Act, 1988, the multiplier of 11 should have been applied by the tribunal. He also contended that interest should have been awarded without any condition.

7. Mr. Lamba, Dy. G.A. submits that in the facts and circumstances of the case, the multiplier of 7 in place of 9 ought to have been applied by Tribunal. However, he has not referred any provision of law or citation of any judgment in support of his contention. His next contention is that award of interest on failure to make payment within 45 days, amounts to levy of penalty which is not provided under the provisions of Motor Vehicles Act, therefore, this condition is liable to be set aside. He also submits that even if interest has to be awarded the rate of interest should not be more than 9% as awarded by the Hon"ble Supreme Court in various cases.

8. I have considered the rival submissions and examined the impugned judgment passed by the learned tribunal and also record of the tribunal.

9. Learned Counsel for the claimant appellants as well as Dy. G.A., both have not challenged the findings in respect of negligent driving of the vehicle as well as age and income of the deceased.

10. Only controversy in the present case is about the proper multiplier to be used for the purpose of calculation of the amount of compensation and also in respect of rate of interest to be awarded. So far as conditional order to pay the interest, in case payment of compensation is not made within a period of 45 days, is concerned, the same is not proper and justified. The interest has to be awarded in claim cases.

11. Although the second schedule appended with the Motor Vehicles Act, 1988 relates to Section 163A of the Act is not applicable in each and every case relating to claim application u/s 166 of the Motor Vehicles Act, 1988, but it is safe to apply the same looking to the facts and circumstances of the case. The age of the deceased as 51 to 52 years has not been disputed by the learned Government Advocate and as per second schedule the multiplier in respect of age of victim above 50 years and not exceeding 55 years is 11. Therefore, it will be in the interest of justice to apply the multiplier of 11 in the present case.

12. So far as the rate of interest to be awarded on the amount of compensation is concerned. Learned Counsel for the claimant appellants does not dispute that

it can be 9% per annum in view of judgment of the Hon'ble Supreme Court given in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . There is another judgment of the Hon'ble Supreme Court in the case of Amarjit Singh Vs. Charanjit Singh and Others, , wherein their lordships of the Hon'ble Supreme Court has awarded the interest on compensation at the rate of 9% per annum. Therefore, the rate of interest in the present case will be 9% per annum.

13. In view of above, the amount of compensation in the present case is calculated as Rs. 8,000 x 12 x 11 = i.e., Rs. 10,56,000/-. The tribunal has awarded Rs. 2,000/- towards funeral expenses, rupees 5,000/- towards medical bills and Rs. 50,000/-towards "loss of consortium" as well as "love and affection". The said amount will remain unchanged and will be included in the amount of compensation of Rs. 10,56,000/-. Therefore, total amount of compensation comes to Rs. 10,56,000/- + 2000 + 5000 + 50,000 = i.e., Rs. 11,13,000/- This amount will carry interest at the rate of 9% per annum from the date of filing of application i.e., 27.10.1998 to till the actual date of deposit of the amount of the non applicants in the tribunal. The amount already paid/deposited in the tribunal either as interim compensation or in pursuance of the interim stay order by this Court, the same will be adjusted in the final payment and remaining amount will be deposited.

14. Both the appeals are accordingly allowed in part. The impugned judgment/award is modified. The amount of compensation of Rs. 9,21,000/- is enhanced to Rs. 11,13,000/-. The conditional order to pay Interest is set aside. However, this amount will carry interest at the rate of 9% per annum. Learned Dy. Government Advocate wants time to deposit the amount of compensation. Three months" time is allowed to deposit the said amount with interest in the tribunal. The Tribunal is directed to deposit Rs. 3,00,000/- in the name of Navratan Devi w/o Giriraj Prasad Ladiwal and rupees 3,00,000/- in the joint names of Ram Swaroop Ladiwal and Shobhagawati, the parents of the deceased Giriraj Prasad Ladiwal for a period of six years in the Monthly Income Scheme of the Post Office. The remaining amount shall be deposited in the FDR in post office in the joint names of Smt. Navratan Devi, Vimal Kumar Agarwal and Vinod Kumar Agarwal, wife and sons of the deceased Giriraj Prasad Ladiwal, for the period of 6 years. The claimants will be entitled to receive interest on MIS and FDR on monthly/quarterly basis and full amount on the date of its maturity. No order as to costs.