
(2014) 04 RAJ CK 0138
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1491/2003

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Kaushalya Devi and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 04 RAJ CK 0138

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Vizzy Agarwal, Advocate for the Appellant; J.P. Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This civil misc. appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed against the Judgment & Award dated 11.3.2003 passed by the Judge, Motor Accident Claims Tribunal, Ajmer (hereinafter "the Claims Tribunal") whereby the respondent No. 6 Jabbar Khan- the owner of the Truck-HR-55/2782 as also the appellant insurance company with whom the aforesaid vehicle was insured have been held jointly and severally liable to pay compensation to the claimants respondents No. 1 to 5 (hereinafter "the claimants") in a sum of Rs. 9,63,656/- along-with interest 9% p.a. from the date of presentation of the claim petition. Counsel appearing for the appellant Insurance Company has confined his arguments to the quantum of the compensation granted by the Claims Tribunal. He has submitted that without any credible evidence the salary of the deceased-Bheem Singh Yadav was taken by the Claims Tribunal at Rs. 5,000/- p.m. only on the basis of the statement of AW-1- Smt. Kaushalya Devi (wife of the deceased) and AW-2 Ram Lal Yadav- owner of the truck insured with the insurance company. He has submitted that in-fact the evidence of AW2-Ram Lal Yadav was garbled and incredible and the conclusions of the Claims Tribunal as to the wages of the deceased workman Bheem Singh Yadav based on his evidence

are perverse in nature. It has been submitted that AW2 Ram Lal Yadav admitted in the cross-examination that he never personally made payment of Rs. 5,000/- p.m. to the deceased Bheem Singh Yadav as wages. Counsel has submitted that without any other credible proof of income/wages of the deceased Bheem Singh Yadav as driver on the vehicle insured with the insurance company his wages ought to have been determined as minimum wages and compensation determined should have been based thereon. It has been further submitted that even otherwise the compensation as granted was extremely excessive in the context of the principle of law enunciated by the Hon"ble Apex Court that "just compensation" is to be determined inter alia with reference to the interest in the first year on the compensation awarded being approximately equal to the yearly dependency of the claimants. Counsel has submitted that with reference to the aforesaid principle, the compensation of Rs. 9,63,656/- along-with interest thereon in the context of the salary of the deceased Bheem Singh Yadav @ Rs. 5,000/- p.m. and dependency at Rs. 4091/- as found by the Claims Tribunal was wholly excessive.

2. Mr. J.P. Gupta, counsel appearing for the claimants No. 1 to 5 submitted that the award passed by the Claims Tribunal is just and fair more so in the context of the fact that the Claims Tribunal has not taken into consideration the future prospects of the deceased Bheem Singh Yadav- who was 26 years of age at the time of the death and were the future prospects of the deceased taken into consideration the compensation would have been higher. He further submitted that the claimant No. 1 Smt. Kaushalya Devi, the wife of the deceased Bheem Singh Yadav was 24 years of age at the time of his death, the claimant No. 2 Giriraj Yadav his minor son was four years old, the claimants No. 3 and 4 are parents of the deceased and the respondent No. 5 the grand-father of the deceased. It was also submitted that in the context of universal inflation in the economy and decades for which the young widow and her minor son would have to sustain without an earning member and without male guidance, the amount of compensation awarded cannot be said to be excessive.

3. I have heard the counsel for the appellant Insurance Company as also the counsel appearing for the respondents claimants.

4. The factum of the employment of the deceased Bheem Singh Yadav with the owner of the truck insured with the insurance company is not in dispute. The age of the deceased Bheem Singh Yadav has been established from the evidence on record before the Claims Tribunal as 26 years at the time of his death. The only dispute raised by the appellant Insurance Company is with regard to the monthly salary of the deceased at the time of his death. In my considered opinion, in the context of the fact that there was unchallenged testimony of the wife of the deceased Bheem Singh Yadav as AW2- Smt. Kaushalya Devi with regard to the salary of the deceased at Rs. 5,000/- p.m. as also the statement to this effect, albeit garbled, by the owner of the insured vehicle as Ram Lal Yadav as AW2, there can be no occasion for debunking the entire evidence as to the salary/

wages of the deceased Bheem Singh Yadav at the time of his death on the mere argument of doubt agitated by the counsel for the appellant and resorting to the minimum wages at the relevant time for determining compensation to which the claimants are entitled. It is universally acknowledged that the job of the driver of a heavy vehicle is a skilled job and it would be most unfair to evaluate the salary of such a driver with reference to the minimum wages prevailing at the relevant time. In my considered view, in the facts obtaining the Claims Tribunal has not committed any perversity in taking the wages of the deceased Bheem Singh Yadav @ Rs. 5,000/- p.m. at the time of his death. Further taking into consideration the meager salary of the deceased and his obligation to sustain his young wife, minor son, his parents and grandfather, a small deduction of Rs. 909/- was made by the Tribunal and dependency of the claimants fixed at Rs. 4091/- p.m. Nothing perverse can thus be found with the determination of compensation by the Tribunal. Consequently, in the over-all facts of the case, I find no force in the appeal. The appeal is accordingly dismissed.