

(2019) 08 RAJ CK 0115

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 597 Of 2017

New India Insurance Company Limited

APPELLANT

Vs

Hamera And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Citation : (2019) 08 RAJ CK 0115

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Sanjeev Johari, G.S. Rathore

Final Decision : Partly Allowed

Judgement

The matter comes upon an application (Inward No. 01/2019) filed by the respondents-claimants seeking to withdraw the amount deposited by the appellant-insurance company in the FDRs.

With the consent of the parties, the matter is heard finally. The present appeal has been preferred by the appellant-insurance company against the Award dated 24.12.2016 passed by the learned Motor Accident Claims Tribunal No. 1, Udaipur in Motor Accident Claim Case No. 911/2015.

The respondents-claimants preferred a joint claim petition seeking to grant compensation on account of death of Udailal in an accident, which took place on 02.07.2015, on various grounds before the learned Motor Accident Claims Tribunal No. 1, Udaipur. The reply was filed on behalf of the appellant-insurance company denying the allegations in the claim petition. Thereafter, on completion of the pleadings the learned Tribunal framed the issues.

After hearing the counsel for the parties, the learned Tribunal decided the claim petition of the respondents-claimants and awarded a sum of Rs. 17,90,000/- in favour of the respondents-claimants and against the appellant-insurance company as well as respondents 4 and 5 i.e. driver and owner of the offending

vehicle jointly and severally with a direction to pay an interest @ 8.5% per annum on the amount awarded.

Heard learned counsel for the parties.

Learned counsel for the appellant submits that the present appeal has been filed only on two grounds. Firstly, the amount computed towards the future prospects is on the higher side as admittedly, the deceased Udailal was 19 years of age and was not in any permanent job and therefore, the learned tribunal should have taken into consideration only 40% increase in the income of the deceased towards future prospects. Since the learned tribunal has computed the award by taking into consideration 50% increase in the income of the deceased towards the future prospects, the same is required to be reduced to 40%. Secondly, the rate of interest on the awarded sum has been ordered to be paid @ 8.5% per annum w.e.f. the date of filing the claim petition, which is also on the higher side and therefore, he submits that the same should be suitably reduced.

Per contra, learned counsel for the respondents-claimants submits that the rate of interest is not on the higher side and 8.5% is a reasonable rate of interest. As far as the computation of 50% increase in the income of the deceased towards future prospects is concerned, he fairly submits that it should have been 40%.

Considering the submissions made at the Bar, I am of the view that the award dated 24.12.2016 is required to be recomputed in light of the judgment of Hon'ble Supreme Court in the case of S.L.P. (Civil) Case No. 25590/2014 (National Insurance Company Limited V/s Pranay Sethi & Ors.) reported in 2017/ACJ/2700, 2017(4)J.L.J.R. 275, 2017(4)P.L.J.R. 261 to the extent of reducing future prospects as well as rate of interest keeping in mind the other factors taken into consideration by the learned tribunal being not disturbed.

The computation for reducing future prospects which is required to be done in the present case is as under :-

For future prospects :-

40% of Rs.7500/- (Income of deceased)

Rs. 3,000/-

Rs. 7500/- + Rs. 3000/-

Rs. 10,500/-

Amount to be deducted as spent on himself.

Rs. 10,500/- - $\frac{1}{3}$ th = Rs. 3500/-

Dependence Amount

Rs. 10500 - Rs. 3500 = Rs. 7000/-

The age of deceased was 19 years therefore, a multiplier of 18 will be used.

(I)

Compensation due to death

7000 x 12 x 18

Rs. 15,12,000/-

(II)

Total amount awarded in other heads

Rs. 1,70,000/-

Total

Rs. 16,82,000/-

Consequently, in view of the calculation made above, the respondents-claimants are entitled for a total amount of compensation of Rs. 16,82,000/-. The appellants are also entitled to an interest @ 7% on the awarded sum from the date of filing of the application i.e. 20.10.2015 till the actual payment is made. The amount so determined above shall be paid to the respondents-claimants within a period of four weeks.

At this stage, learned counsel for the respondents-claimants submits that the respondent No. 2 - Smt. Rupali and respondent No. 3 - Smt. Kailashi are in dire need of money for construction of their house. He, therefore, prays that the FDRs of Rs. 2,50,000/-each made in their names should be allowed to discontinue.

In view of the prayer aforesaid, it is ordered that an amount of Rs. 2,50,000/- shall be released in favour of the Smt. Rupali (respondent No. 2) and Smt. Kailashi (respondent No. 3) each after dissolving the FDRs of the requisite amount prepared in the names of the respondent Nos. 2 and 3. The rest of the amount shall be allowed to continue in the FDRs in their respective names.

With the above modifications, the present misc. appeal is partly allowed. Stay petition also stands disposed of.