(2014) 03 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 4407 and 4406/2007 and 2844/2009

Om Prakash Yadav and Others — APPELLANT

Vs

Sher Singh Yadav and Others — RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 03 RAJ CK 0015

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : R.S. Sharma, Advocates for the Appellant; Praveen Jain, Advocates for the Respondent

Judgement

Nisha Gupta, J.—All these appeals arises out of a common judgment/award dated 2.7.2007 passed by Judge, MACT (ADJ- Fast Track), Behror Distt. Alwar in different Claim Cases and common accident, hence are decided by this common judgment.

2. Brief facts of the case relevant for disposal of the appeals are that claim petition has been filed as road accident has occurred on 29.4.2006 when Smt. Sumit Devi with her brother Kishanlal were going on a motor cycle at about 5.30 PM when they reached at Khandoda turn, suddenly truck No. HR-55-E-2671 driven rashly and negligently, hit the motor cycle, Kishanlal has died and Smt. Sumit Devi suffered injuries. Apart from it, it has also been stated that motor cycle has also been damaged. The court below has allowed the claim petition as regards death of Kishanlal and injuries to Sumit Devi whereas for claim of damages to motor cycle, the claim petition has been dismissed, hence these appeals.

3. The contention of the appellants as regards claim No. 312/2006 is that income of the deceased has not rightly been assessed, deductions for personal expenses have been made on higher side, for loss of love and affection and consortium meager amount has been awarded and no future prospects have been added. As

regards Claim No. 313/2006, it has been submitted that motor cycle has been damaged but no compensation has been awarded and in claim No. 314/2006 it has been submitted that in spite of permanent disability of 11.2%, the meager amount has been awarded.

Per contra, the contention of the respondents is that no interference is needed and the court below has rightly decided the claim petitions.

4. Heard the learned counsel for the parties and perused the impugned award as well as the original record of the case.

5. As regards Claim No. 312/2006, admittedly the deceased was of age of 35 years, he was a constable in Central Reserve Police Force, his pay roll Ex. 10 has been placed on record according to which his salary has been assessed as 7217/-. The contention of the appellants is that allowances has not been calculated, in Ex. 10 some other amount has also been shown but the claimants have not explained that which allowances the deceased was getting. During the course of arguments also, it could not be explained by the counsel for the appellants, hence in absence of explanation that which allowance, the deceased was getting, the court below rightly assessed his income on the basis of document Ex. 10 and no interference is needed.

1/3 amount has been deducted for his personal expenses but looking to the number of dependents, the counsel for the appellants has rightly contended that it should be 1/4, hence deductions should have been made for personal expenses as 1/4.

6. Admittedly, the deceased is having 5 dependents (wife, three children and father) but only a meager amount of Rs. 15,000/- has been awarded for love and affection, hence for love and affection each dependent will get Rs. 10,000/- and for loss of consortium, wife would also get Rs. 10,000/- for funeral expenses amount has already been awarded and no interference is needed.

7. The other contention of the appellants is that the deceased was a constable having permanent job and his age was only 35 years, hence in view of Reshma Kumari and Others Vs. Madan Mohan and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, 30% have to be added as future prospects. In view of the law laid down (supra), the appellants are entitled for 30% future prospects.

8. The contention of the respondents is that age of the deceased has not been proved by way of best evidence, the deceased was a public servant but service record has not been produced to prove his age. It is true that service record has not been produced to prove his age but the court below has rightly assessed the age of the deceased on the basis of Parchabayan and post mortem report and no evidence in rebuttal has been produced which can controvert the narration in Parchabayan and post mortem, objection is not acceptable.

9. The other contention of the respondents is that deceased was getting special

pay which is not a regular income and only attach to a particular post. Be that as it may, but as per Ex. 10 at the time of death, the deceased was getting special pay, the court below has rightly calculated the compensation on the basis of last salary and no interference is needed.

10. The other contention of the respondents is that the salary of the deceased was Rs. 7217/- per month and with the increase of 30%, the salary would become taxable, hence the appropriate deductions towards tax be given and reliance has been placed on Ranjana Prakash and Others Vs. Divisional Manager and Another, ; and Shyamwati Sharma and Others Vs. Karam Singh and Others, but counsel for the appellants has rightly pointed out that in 2006, the exemption limit from the income tax was 1,50,000/- per year for government servant and the deceased was not getting income above the limit. Ex. 10 pay roll also suggests that no deductions have been made on account of tax, hence nothing can be deducted as tax. The contention of the appellants seems to be sound and accepted.

11. The other contention of the respondents is that admittedly, the age of the deceased was 35 years but multiplier of 17 has been used as per the law laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier is 15. The contention of the respondent is acceptable and after applying the multiplier of 15, the compensation should be calculated.

12. Hence, in the light of the above, the impugned award in relation to claim case No. 312/2006 is modified in the terms that claimants are entitled for compensation for loss of income to the tune of Rs. (7217-1/4) 5413+30% = 7037 x 12 x 15 : 12,66,660-9,81,648 (already awarded by the Tribunal) : 2,85,012/- and for love and affection each dependent will get Rs. 10,000/- which comes to (50,000-15,000/-) : 35,000. The compensation on other heads is confirmed. The enhanced amount of compensation shall be paid to the appellants-claimants of deceased Kishanlal by the Insurance Company within a period of two months from today alongwith 6% interest from the date of filing appeal.

13. As regards Claim Case No. 313/2006, the court below has rightly held that no evidence has been produced that the vehicle has been damaged due to accident and a liberty has also been given that from the concerned Insurance Company, the damaged property could be claimed, hence in view of the evidence led before the court below, the findings of the court below are justified and no interference is needed.

As regards Claim Case No. 314/2006, on the scale of minimum wages, the income of the injured has rightly been assessed, as per his age appropriate multiplier has been applied for grievous injuries, a just and reasonable compensation has been awarded and medical bills have also been reimbursed, hence no interference is needed.

In view of the above, in appeals No. (4406/2007 and 4407/2007 arising out of claim case Nos. 314/2006 (290/2006) and 313/2006 (289/2006), no interference is needed and both these appeals are dismissed. The Appeal No. 2844/2009 filed in relation to claim case No. 312/2006 is partly allowed as above.

