

(2012) 02 RAJ CK 0132

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3171 of 2005

Oriental Insurance Company Ltd.

APPELLANT

Vs

Ganga Ram and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 4 TAC 141

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : Rishipal Agarwal, for the Appellant; Mahendra Goyal with Mr. Prashant Joshi, Advocates for the Claimants, for the Respondent

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment and award dated 16th September, 2005, whereby the Motor Accident Claims Tribunal, Jaipur District, Jaipur (hereinafter to be referred as the "Tribunal"), decreed an amount of Rs. 13,83,000/- in favour of the claimants-respondents No. 1 to 5 and against the appellant and respondents No. 6 and 7, to be paid jointly and severally. Skipping unnecessary details, the facts of the case in brief are that on 12th November, 2002, at about 4:00 pm Prahlad Meena died in an accident having caused by the driver of the tractor bearing Registration No. RJ-14-2C-0389. The dependents of the deceased filed a claim petition before the Tribunal and the Tribunal after conclusion of the trial of the claim petition, decreed the aforesaid amount.

2. Albeit, the appellant has enumerated so many grounds in memo of appeal, but the learned Counsel appearing for the Insurance Company concentrated his arguments only on the ground of income of the deceased estimated by the Tribunal for the purpose of computing the loss of dependency. Learned Counsel for the appellant took me through the statements of witnesses and other relevant documents and contended that despite there being no cogent and trustworthy evidence with regard to the income of Rs. 8,000/- of the deceased, the Tribunal estimated his income to be Rs. 8,000/- per month and keeping in

view the prospective increase, considered Rs. 10,000/- to be the total monthly income of the deceased for reckoning the quantum of compensation, which is abysmally high in the facts and circumstances of the case. Albeit, the deceased is said to have been raising income through the occupation of being an LIC agent, ploughing fields of others by tractor and trading of buffaloes, but the dependents have not produced any evidence to substantiate the same. Bare oral testimony in this regard is not suffice to evince such an exorbitant income, hence, the income so estimated by the Tribunal be reduced to an apposite level say of Rs. 4,000/- or Rs. 5,000/- and thereafter, applying the prescribed multiplier, the quantum of compensation may be computed.

3. E. converso, Mr. Mahendra Goyal, learned Counsel appearing for the claimants-respondent Nos. 1 to 5 defended the impugned award and stated the same to be just and proper. He further contended that the deceased Prahlad Meena was having more than one source of income and he was earning not only as a LIC agent, but through selling milk, ploughing fields of others by tractor and trading buffaloes. The dependents have produced AW-1 Gangaram to substantiate this fact. He was subjected to cross-examination, but the statement with regard to the income of the deceased through different sources remained unrebutted. The witness Gangaram happens to be the father of the deceased, who stated on oath that whole family was dependent on his earnings and he used to earn Rs. 10,000/- -- 15,000/- per month, hence, there is no reason to jettison the statement of Gangaram and to consider the income of Rs. 4,000/- or Rs. 5,000/- per month shall be too exiguous in the facts and circumstances of the case.

4. Mr. Mahendra Goyal having argued for some time adlongum, finally proposed that instead of Rs. 10,000/-, an income of Rs. 7,000/- may be considered for the purpose of reckoning the quantum of compensation.

5. Proposal was placed before the learned Counsel for the Insurance Company and he fairly agreed and conceded that the quantum of compensation may be reckoned in the light of judgment of the Hon''ble Apex Court delivered in the case of Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. in 2009 (2) W.L.C. (S.C.) Civil 323 : 2009 (2) T.A.C. 677 (S.C.) considering Rs. 7,000/- to be the monthly income of the deceased.

6. Having reflected over the submissions made by the learned Counsel for the parties and carefully scanned the judgment of Sarla Verma (supra), it is noticed that in Para 14 of the afore-stated judgment the Hon''ble Apex Court has proposed the standardized deductions to be made towards. personal and living expenses of the deceased. It has been proposed that where the number of dependent family members is 4-6, 1/4 (one fourth) income should be deducted towards personal and living expenses of the deceased in consideration to the expenses incurred to maintain himself had he been alive. In the instant case, the number of dependent family members is five, hence, 1/4 income is to be reduced from the total income towards the personal and living expenses of the deceased.

7. Similarly, in Para 21 of the judgment the Hon''ble Apex Court has proposed the operative multiplier for different age groups of victims. The deceased Prahlad Meena was born on 2nd January, 1971 and as per the relevant documents, he was 32 years of age on the date of accident. The Hon''ble Apex Court has prescribed the multiplier of 16 for the age group of 31-35 years, hence, considering Rs. 7,000/- to be the monthly income of the deceased, reducing 1/4 towards personal and living expenses of the deceased from the total income and after applying the multiplier of 16, the quantum of loss of dependency may be computed thus:-

$$7,000/- \times 12 \times \frac{3}{4} \times 16 = \text{Rs. } 10,08,000/-$$

8. The Tribunal has awarded Rs. 20,000/- towards the loss of love and affection of four children @ Rs. 5,000/- each, Rs. 2,000/- towards funeral expenses and Rs. 1,000/- towards cost of litigation. This amount is found to be quite apposite and I do not find any ground to interfere with the same.

9. The upshot of the case is that the amount towards loss of dependency awarded by the Tribunal is reduced from Rs. 13,60,000/- to Rs. 10,08,000/- and the amount awarded towards other heads shall remain uninterrupted.

10. For the reasons stated above, the appeal is partly allowed and the claimants-respondents No. 1 to 5 are held entitled to claim Rs. 10,31,000/- instead of Rs. 13,83,000/- from the appellant and respondents No. 6 and 7, jointly and severally. Rest of the terms under the award shall remain unchanged.

11. The impugned award stands modified, as indicated here-in-above. The appeal stands disposed off, accordingly.