

(2016) 07 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 143 of 1999

Pista

APPELLANT

Vs

Gurmita Singh

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2016) 3 DNJ 1188 : (2016) 4 RLW 2898 : (2017) 1 WLN 355

Hon'ble Judges : Mr. Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. V.L. Thanvi, Advocate, for the Appellant; Mr. Manoj Bhandari and Mr. Govind Suthar, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J—This appeal has been filed by the appellants-claimants aggrieved against the award dated 16.9.1998 passed by Motor Accidents Claims Tribunal, Sojat, whereby the appellants have been awarded a sum of Rs. 3,13,000/- along with interest @ 12% from the date of filing the application for compensation i.e. 6.1.1996.

2. The appellants wife and children of deceased Kewalram filed an application for compensation, inter alia, with the averments that Kewalram was dealing with skin of dead animals and while transporting his goods, he met with an accident resulting in his death. It was, inter alia, claimed that the deceased was aged 30 years and used to earn Rs. 125/- - 130/- per day and based on the said aspect the claimants, claimed a sum of Rs. 27,78,000/- as compensation for untimely death of Kewalram in the accident. Application for compensation was contested by the Insurance Company and the Tribunal after evidence was led by the parties" came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of the truck Gurmeet Singh and that Insurance Company was liable for payment of amount of compensation.

3. While dealing with the aspect of compensation the Tribunal came to the conclusion that claimant used to earn Rs. 100/- per day i.e. Rs. 3,000/- per month and after deducting 7rd towards his personal expenses determined the dependency at Rs. 24,000/- p.a. and after applying a multiplier of 12, awarded a sum of Rs. 2,88,000/- towards loss of dependency. Further a sum of Rs. 25,000/- was awarded towards loss of consortium and love & affection and in all a sum of Rs. 3,13,000/- was awarded as compensation.

4. It is submitted by learned Counsel for the appellants that the Tribunal committed error in awarding a meagre compensation to the appellants and the award of compensation is ex-facie contrary to the evidence available on record and the law laid down by the Hon'ble Supreme Court and, therefore, the award passed by the Tribunal deserves to be modified.

5. Reliance was placed on judgment of Hon'ble Supreme Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. Learned Counsel for the respondent Insurance Company supported the award passed by the Tribunal. It was submitted that appellants failed to lead any evidence in support of the income of the deceased and, therefore, the Tribunal was justified in taking the income of the deceased at Rs. 100/- as at the relevant time the minimum wages were Rs. 96/- only and, therefore, the award does not call for any interference, it was also submitted that the Tribunal awarded interest at the rate of 12% per annum, which is excessive.

7. I have considered the submissions made by learned Counsel for the parties and have perused the material available on record.

8. From perusal of the application for compensation, it is apparent that the claimants claimed that deceased Kewalram used to earn Rs. 125/- - 130/- per day while working in his leather industry.

9. It is an admitted fact that the accident occurred when the deceased was travelling in the truck which was carrying the goods of the claimants and, therefore, the fact that the deceased was engaged in the business of leather is well established. Appearing for the claimants as witness PW-1 Gomaram who was also travelling with the deceased, indicated that Kewalram used to earn Rs. 125/- -130/- per day. He was not cross-examined on the said aspect by the respondents. PW-2 Pista wife of the deceased also appeared and specifically indicated that deceased used to earn Rs. 125/- - 130/- per day. In the cross-examination she indicated that he used to earn Rs. 5000-4000/- per month.

10. From the oral evidence available on record, which in the circumstances of the case and the nature of work which was being undertaken by the deceased could be the only evidence, the claimants were able to establish to the extent that deceased used to earn Rs. 125/- - 130/- per day and for lack of any effective cross-examination, there was no reason for the Tribunal to come to the conclusion that the deceased used to earn Rs. 100/- per day only. To the said

extent, the finding of the Tribunal cannot be sustained and in view of the evidence available on record, income of the deceased is taken as Rs. 125/- per day i.e Rs. 3,750/- per month.

11. So far as the adoption of multiplier is concerned, in view of the law laid down in the case of Sarla Verma (supra), a multiplier of 17 when the age of the deceased is 30 years only is the appropriate multiplier and further in view of the number of dependents on the deceased being 7, the deduction could only be 7th of the said amount and, therefore, the finding of the Tribunal to that extent also requires modification.

12. In view of the above, in the head of loss of dependency, the claimants would be entitled to a sum of Rs. $3,750 \times 12 \times 17 = 7,65,000 - 1,53,000$ (7th) = 6,12,000/-. Further the awarded amount under the head of loss of love and affection to the claimants also appears to be wholly inadequate, inasmuch, as for loss of consortium and love & affection to wife and six children aged between one month to eight years, a consolidated sum of Rs. 25,000/- has been awarded. The said amount also deserves to be enhanced to Rs. 75,000/-.

13. So far as the award of interest is concerned, in view of the fact that amount of compensation along with the interest as awarded by the Tribunal has already been paid to the appellants and there is no cross-objection on the part of the respondents, the rate of interest does not require any interference, however, on the enhanced amount, the appellants would be entitled to interest at the rate of 9% per annum.

14. In view of the above discussion, the appeal is partly allowed. The award passed by the Tribunal is modified to the extent that instead of a sum of Rs. 3,13,000/- the appellants would be entitled to a sum of Rs. 6,87,000/- as compensation. On the enhanced amount of Rs. 3,74,000/- the appellants would be entitled to interest at the rate of 9% from the date of application i.e. 6.1.1996 till the date of payment. Out of the above amount appellants No. 2 to 7 would be entitled to a sum of Rs. 30,000/- each along with interest and rest of the amount of Rs. 1,94,000/- along with interest would be paid to appellant No. 1. The amount shall be deposited in the saving bank accounts of the appellants.

15. It would be required of the respondent Insurance Company to make payment of the said amount as expeditiously as possible preferably within a period of three months from today.