

(2012) 10 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Cross-Objection No. 60 of 2009 in Civil Miscellaneous Appeal No. 1380 of 2006

Raj. State Road Transport Corp.

APPELLANT

Vs

Smt. Sumitra Devi and Others

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 151

Citation : (2013) 3 CDR 1480

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Virendra Agarwal, for the Appellant; Mahendra Agarwal, for the Respondent

Judgement

Mahesh Chandra Sharma, J.—The appeal No. 1380 of 2006 has been filed by the Rajasthan State Road Transport Corporation (in short MACT) against the award dated 8.2.2006 passed by Judge, Motor Accident Claims Tribunal (Addl. District Judge No. 7) Jaipur City, Jaipur (in short MACT) in MACT case No. 193/2004 whereby claim petition of the claimants was allowed and they have been granted compensation in the amount of Rs. 4,87,800/-. After service of notice the claimants have filed cross objections under Order 41 Rule 22 read with Section 151 CPC for enhancing the compensation. It would be appropriate for this Court to decide the appeal and the cross objections by this common order. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. The brief facts of the case are that Dharamveer died on 5.4.98 during course of treatment at SMS Hospital Jaipur on account of injuries sustained in the road accident allegedly occurred on 8.3.98 between Maruti Van No. RJ 19 C 1336 and Bus No. RJ 14 P 4540 when the deceased was travelling in the Maruti Van. The claimants stated that Dharamveer was going in Maruti Van which was being driven by Hira Lal and was owned by Mahadev and the said Van was hit by bus

belonging to the RSRTC and it was being driven by Mahendra Kumar Sharma rash and negligently and as such the accident occurred due to sole negligence of the driver of the bus and hence they filed the claim petition. It was stated that if the MACT comes to the conclusion that the driver of the Maruti Van was also negligent then the claim may be awarded against both the vehicles and as such the insurer of the Maruti Van was also impleaded as party. The said claim petition was later on transferred to the Court of Motor Accident Claim Tribunal (Additional District Judge No. 7) Jaipur City Jaipur where it was registered as claim case No. 193/2004. The FIR to the incident was also lodged at Police Station Dausa bearing FIR No. 119/98 which was lodged by Mahendra Kumar, the driver of the bus of the RSRTC and after investigation police authorities filed charge sheet against the driver of Maruti Van holding him sole negligent.

3. Mr. Virendra Agarwal, learned counsel for the appellant RSRTC has argued that the award dated 8.2.2006 is absolutely illegal without jurisdiction and contrary to the facts of the case. The findings of the MACT on issue No. 1 is absolutely illegal, perverse and contrary to the record. The MACT has committed serious error in holding that accident in question occurred due to composite negligence of both the drivers of the vehicles. The FIR to the incident was lodged by the driver of the Bus belonging to the RSRTC by the driver that the accident in question took place due to sole negligence of the driver of Maruti Van. The FIR was lodged immediately after happening of the accident and as such the same cannot be disbelieved and particularly when the police authorities also filed charge sheet against the driver of the Maruti Van holding him sole negligence hence the finding of the MACT in respect of issue No. 1 is erroneous. The only eye witness produced by the claimants is Pawan Kumar Garg who also sustained injuries in the same accident and as such he was an interested witness and hence there was no reason to disbelieve the charge sheet and FIR which have been produced by the claimants themselves and thus the MACT has committed serious error in holding that the driver of the bus was also negligent to some extent. The learned counsel has further argued that there was no evidence on record to show the negligence of the driver of the bus then the question of giving direction to make liable the RSRTC to the extent of 50% of the awarded amount does not arise and the claim petition deserves to be dismissed. There was no evidence on record to show the income of the deceased even then the MACT has assessed the income to be Rs. 3600 per month without any documentary evidence. The multiplier of 16 adopted by the MACT is on very higher side looking to the fact that law laid down by the Apex Court in the case of Tamil Nadu State Road Transport Corporation vs. R. Rajapriya. The interest awarded from the date of filing of the claim petition is wrong and it should be from the date of passing of the award.

4. Mr. Mahendra Goyal, learned counsel appearing for the claimants opposed the arguments of the learned counsel for the appellant RSRTC and has also argued that while deciding the issue No. 4 the MACT has committed gross error of law and facts in awarding a meager compensation in favour of the claimants. It was

argued that the deceased was Chairman of the Rajasthan Jeevan Raksha Vikas Finance and Investment Ltd. and as such his income even in absence of any documentary evidence could not have been reckoned as the income of a skilled worker. The MACT has failed to appreciate that the age of the deceased was 34 years only and there was every possibility of his future prospects of rise. The deceased expired after 25 days of the accident in the Hospital and he and his family suffered physical as well as mental agony for this period of 25 days after the incident for which he was hospitalised. No compensation has been awarded by the MACT on account of physical and mental agony. The interest awarded is 6% per annum but it should be 9% per annum. Lastly it was prayed that the compensation awarded may be increased.

5. I have considered the arguments raised by the learned counsel for the parties. I have also gone through the award passed by the MACT. In regard to findings on issue No. 1 the MACT observed as under:

6. I am in agreement with the findings arrived at by the MACT. The MACT has rightly held the RSRTC and the owner of the Van responsible for the accident jointly and rightly directed to pay 50% of the compensation by the RSRTC and 50% by the owner of the Van.

7. It has come on the record that the deceased was Chairman of the Rajasthan Jeevan Raksha Vikas Finance and Investment and Rs. 10,000/- per month was shown as received from that work but no documentary evidence was produced and even the Rajasthan Jeevan Raksha Vikas Finance and Investment Co. was also closed after accident. In the absence of documentary evidence the MACT determined the income of the deceased to be Rs. 120/- per day and in this manner one third amount was deducted to be incurred by the deceased on self. The age of the deceased was 36 as per the post mortem report and hence multiplier of 16 was applied. In this manner towards income compensation in the amount of Rs. 4,60,800/- was determined by the MACT. For love and affection of two children Rs. 20,000/- was awarded and Rs. 2,000/- was awarded for funeral expenses. Towards consortium the MACT awarded Rs. 5,000/- to the wife. In this manner a sum of Rs. 4,87,800/- was awarded. This amount cannot be said to be meager. The claimants are not entitled for any further compensation. In view of the above the misc appeal filed by the RSRTC against the award dated 8.2.2006 passed by Judge, Motor Accident Claims Tribunal (Addl. District Judge No. 7) Jaipur City, Jaipur in MACT case No. 193/2004 whereby claim petition of the claimants was allowed and they have been granted compensation in the amount of Rs. 4,87,800/- is rejected and the cross objection filed by the claimants for enhancement of compensation also stands rejected.