

(2001) 01 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2 of 2001

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Murli Devi and Others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2003) ACJ 286 : (2001) 4 WLC 429

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : G.S. Brijwasi, for the Appellant; K.N. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—The present misc. appeal has been preferred challenging the award dated 10.4.2000 passed by Motor Accidents Claims Tribunal, Jaipur City, Jaipur, in M.A.C.T. Case No. 519 of 1995 whereby the claimants, i.e., mother, widow and children of deceased Mohan Lal have been awarded the compensation of Rs. 4,08,880 on account of death of Mohan Lal, in the accident occurred on 16.1.1995 when the bus of the Corporation No. RJ 13-P 0743 hit the deceased while he was to cross the road.

2. After framing the required issues in regard to accident, negligence and quantum of compensation, the Tribunal considered the statements of witnesses Pushplata Gupta, AW 1; Babu Lal Saini, AW 2; J.P. Mishra, AW 3; Abdul Jabbar, AW 4; and Bharat Kumar, AW 5; and the documents including FIR, Exh. 1; Challan, Exh. 2; written report, Exh. 3; site plan, Exh. 4, and other documents, and had come to a finding on issue No. 1 that the deceased was knocked down by the offending bus. The deceased Mohan Lal was taken to SMS Hospital where he died. The accident had taken place on kacha side of the road.

3. The defence of the Corporation is to the effect that the deceased was trying to cross the road when he met the accident, which was not believed by the Tribunal

for the reason that as per site plan and statements of witnesses, the deceased was on the kacha left side of the road, i.e., the deceased was walking on the kacha path on the road. It was found by the Tribunal that the deceased was earning Rs. 7,000 and after deducting the amount of expenses, fixed the dependency to be Rs. 5,540 per month. The deceased was 54 years old at the time of accident, as such the multiplier of 6 years was adopted.

4. The salary part of the deceased is not disputed. This court was of the opinion that for the death of 54 years old persons, the multiplier of 6 is not adequate. Even as per Schedule in the Act, which may have some relevance the prescribed multiplier is 11, therefore, the notice was issued to appellant as to why the compensation be not enhanced because of wrong application of the multiplier and Mr. K.N. Tiwari was directed to assist the court.

5. Counsel for parties desires that the matter be decided today itself as only the question of adequate multiplier or adequate compensation is involved in this matter. Therefore, the arguments have been heard and concluded.

6. Learned counsel for the claimants-respondents placed reliance on the judgment in the case of Rajasthan State Road Transport Corporation v. Manumati Mahamia 1987 ACJ 1045 (Rajasthan), wherein this Court has held that even if no appeal or cross-objections are filed by the claimants for enhancement of rate of interest, the appellate court can enhance the rate of interest from 6 per cent to 12 per cent per annum from the date of application till realisation. It was observed that in absence of cross-objection or appeal, it is the duty of the court to see, whether or not the cross-objection is filed, that the award is made in accordance with the statutory provisions and the interest on compensation should be awarded from the date of making the claim.

7. Learned counsel for the claimants has also relied on the judgment in case of Divisional Controller now The Divisional Controller, Now The General Manager, Karnataka State Road Transport Corporation And Bangalore Transport Service, Bangalore Vs. J.D. Sigamany And Another, wherein it was held that if the circumstances so warrant, nothing precludes an appellate court from granting a well deserved relief having regard to the powers vested in it under Order XLI, Rule 33, Civil Procedure Code. It was held that in absence of appeal or cross-objection filed by claimant if the circumstances warrant and justify, the appellate court can enhance the compensation awarded by the Tribunal.

8. After considering the arguments of parties, I am of the opinion that the multiplier of 6 is required to be modified. Even some assistance is taken from the Schedule to the Motor Vehicles Act, the minimum multiplier which can be applied in the case could not have been less than 11. After taking the salary of deceased to be Rs. 7,000, as assessed by the Tribunal, the Tribunal has come to a finding that there were 12 units in the family, i.e., 10 units of claimants and 2 units of deceased, the deduction for the purpose of expenses of deceased was assessed to be two and a half unit. The claimants Kailash Gupta and Naveen Gupta were of

28 and 24 years old at the time of accident it cannot be said that they were wholly dependent on their father. In my opinion, 1/3rd income of the deceased is to be deducted for the expenses of deceased, i.e., Rs. 2,333 and the dependency is to be fixed at Rs. 4,667 per month and applying the multiplier of 11, dependency compensation is fixed to be Rs. 6,16,044 to make a round figure of Rs. 6,16,000. Thus the compensation is enhanced from Rs. 3,98,880 to Rs. 6,16,000. The other amount as awarded by the Claims Tribunal is maintained. Thus the total compensation payable to claimants is Rs. 6,26,000.

9. For the reason that the Tribunal had not applied correct multiplier, therefore, while dismissing the appeal of appellant Corporation, the compensation is enhanced to as mentioned above. It shall bear the interest as awarded by the Tribunal.

10. It is also made clear that the compensation shall be paid to the widow of deceased which shall be deposited in fixed deposit in scheduled bank for a minimum period of three years. The widow shall be entitled to withdraw the interest.

With the above observations, the misc. appeal of appellant is dismissed and the compensation is enhanced as discussed above.