

(2017) 07 RAJ CK 0046
In the Rajasthan High Court
Case No : 2443 of 2011

Ram Karan s/o. Shri Bhagu Ram

APPELLANT

Vs

Sugana Ram s/o. Shri Teja Ram

RESPONDENT

Date of Decision : 19-07-2017

Acts Referred:

Citation : (2017) 07 RAJ CK 0046

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Bharat Devasi, Mahesh Thanvi, B.S. Rathore, S.L. Kumawat

Judgement

1. This appeal is directed against the judgment dated 19.10.2010 passed by the Motor Accident Claims Tribunal, Merta ("the Tribunal"), whereby the Tribunal has rejected the application filed by the appellants for compensation, for lack of any evidence.
2. The application for compensation was filed by the appellants-claimants - parents, wife and children of the deceased Nema Ram with the allegations that Nema Ram was going on a motor cycle as pillion rider alongwith Sugana Ram, when a heavy vehicle came from opposite direction and on account of the motor cycle slipping, Nema Ram suffered grievous injuries and died during the course of treatment. Based on the said averments, compensation was claimed against the Driver and Owner of the motor cycle as well as the Insurance Company to the tune of Rs.45,05,000/-.
3. Reply to the application was filed by Owner and Driver of the

motor cycle denying the averments made in the application. The respondent-Insurance Company also filed its reply and raised objections about the Driver being not in possession of valid and effective driving licence, alleged that three persons were riding motor cycle without helmet and sought dismissal of the application.

4. Based on the averments of the parties, issues were framed by the Tribunal on 20.11.2008, whereafter the claimants were given twenty opportunities to lead evidence, which were not availed and, consequently the evidence was closed on 28.09.2010.

5. The Tribunal after hearing the parties, decided the issue pertaining to the merits of the claim against the claimants for lack of evidence. Issue No.2 pertaining to liability of Insurance Company was also decided against the Insurance Company as no evidence was produced and, ultimately the application was rejected.

6. It is submitted by learned counsel for the appellant that on account of the family conditions, illiteracy and various aspects arising from illiteracy, poverty, etc. the claimants, who are parents, wife and children of the deceased on account of death of sole bread-earner of the family, could not appear before the Tribunal when the matter was fixed for their evidence and on account of such lack of evidence, the claim has been rejected.

7. It was submitted that two children of the deceased were only aged 2 years 9 months and 6 months at the time of death of Nema Ram and on account of minor children, the wife of the deceased and the parents of the deceased being aged 72 and 65 years, on account of their old age, could not do the needful for leading evidence in the matter, resulting in, dismissal of the claim. It is prayed that the claimants may be granted one opportunity to

lead evidence, on which date the claimants would produce all their evidence.

8. It is also submitted that on account of dismissal of the application for compensation, besides death of sole-earning member of the family, the claimants were suffering a lot.

9. Learned counsel appearing for the respondents No.1 and 2 as well as the Insurance Company submitted that adequate opportunity was granted to the appellants and once they failed to avail the said opportunity, there is apparently no reason for granting further indulgence to them and, therefore, the appeal deserves to be dismissed.

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

11. It is not in dispute that the appellant was granted twenty opportunities between 20.11.2008 to 28.09.2010 whereafter the Tribunal closed the evidence. However, it is equally true that the parents of the deceased were too old i.e. 72 years and 65 years and the children of the deceased were only 2 years 9 months and 6 months and, therefore, the submissions made by learned counsel for the appellant has substance that on account of death of the sole bread-earner, the appellants, who are otherwise illiterate, were unable to do the needful for leading evidence before the Tribunal.

12. In those circumstances, in the interest of justice, the appellants are entitled to one more opportunity to lead evidence before the Tribunal.

13. However, it is made clear that in case, the appellants ultimately succeed, the Tribunal while awarding interest on the amount of compensation, will keep in view the fact that the matter remained pending from the year 2007 to 2017 on account of

conduct of the appellants.

14. Consequently, the appeal filed by the appellants is allowed.

The order dated 28.09.2010 and the judgment dated 19.10.2010 are set aside. The matter is remanded back to the Tribunal with a direction to provide opportunity to the appellants to lead evidence in support of their claim.

15. The parties shall appear before the Tribunal on 21.08.2017.

No fresh notices would be required to be issued to the respondents by the Tribunal. The Tribunal would fix a date for evidence by the claimants and would ensure that the evidence is completed within a period of 15 days by the said claimants and, thereafter after providing opportunity to the respondents to lead evidence in support of their case including the Insurance Company, would decide the application as expeditiously as possible.