(2014) 03 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 4375/2007

Ramji Lal Saini and Others — APPELLANT

Vs

Shahjad Khan and Others — RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 133, 149, 166, 170, 173

Citation : (2014) 03 RAJ CK 0047

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Ram Sharan Sharma, Advocates for the Appellant; Tripurari Sharma, Advocates for the Respondent

Judgement

J.K. Ranka, J.—The instant civil misc. appeal has been filed by the appellant-claimant under Section 173 of the Motor Vehicles Act for enhancement of the impugned award dated 31.1.2007 passed by the MACT, Alwar in claim case No. 403/2005, whereby the Tribunal while partly allowing the claim awarded a sum of Rs. 2,87,800/- as compensation to the claimant-appellants.

2. The brief facts as emerging on the face of record are that a claim petition came to be filed by the parents, brothers and sister of deceased Narayan before the Tribunal under Section 166 of the M.V. Act stating therein that on 10.10.2005 the injured Narayan went in connection with jot (prayer) to Umren from there when he was returning to Alwar after completing the job on 10.10.2005 then after Dhai Pedi and in front of Farm House of Chhabdi he was driving motor cycle towards his side at that time from opposite direction a Tempo bearing No. R.J.-02/ G A-0184, which was being driven rashly and negligently came there and hit deceased''s motor cycle from wrong side due to which deceased Narayan''s head, eye and nose crushed thereafter he was carried in a vehicle to the hospital, where he succumbed on account of the injuries. The report of the said incident was lodged at Aravali Vihar Police Station. The concerned police after investigation filed a challan against non-petitioner No. 1 Shahjad Khan on finding

Shahjad Khan guilty. It was averred in the claim petition that deceased Narayan Saini was 25 years of age, he was working on the post of Foreman in the National Product casting, Delhi Road, Alwar and supplying milk from which he was earning Rs. 6000/- per month. The claimants demanded Rs. 87,45,000/- on all counts as a compensation. It was alleged that at the time of accident the non-petitioner No. 1 was driver of the offending vehicle and he was working under the employment and for the benefit of the owner of the said vehicle non-petitioner No. 2. The offending vehicle was insured with the non-petitioner No. 3 Insurance Company. Therefore, it was prayed that all the non-petitioners are responsible for payment of compensation to the claimants jointly and severally.

3. The non-petitioners Nos. 1 & 2 filed their reply denying almost all the allegations made in the claim petition and stated that in the so called accident there was no fault and negligence on part of the driver of the Tempo bearing No. R.J.-02/G A-0184 non-petitioner No. 1. It was also stated that the non-petitioner No. 1 was having effective and valid licence at the time of the accident. It was pleaded that at the time of accident the offending Tempo was insured with the Insurance Company and accident also occurred during the period when insurance policy was effective of the vehicle. It was submitted that if the Tribunal determines any compensation then the same will be liable to be paid by the non-petitioner No. 3. It was prayed in the reply that the claim of the claimants be rejected qua the non-petitioners Nos. 1 & 2. The non-petitioners Nos. 1 & 2 filed their reply on 27.1.2006 and thereafter did not appear before the Tribunal, therefore, ex parte proceedings were drawn against them. The non-petitioner No. 3 Insurance Company filed their reply denying almost all the allegations made in the claim petition and stated that there was no rash and negligent driving by the driver of the Tempo bearing No. R.J.-02/G A-0184 but in fact due to his own mistake and negligence the deceased met with the accident. It was alleged that at the time of accident the deceased was driving motor cycle rashly and negligently due to which he lost control over the motor cycle and dashed with the Tempo. It was further contended that at the time of accident the tempo was driven by a person, who was having an expired driving licence. It was pleaded that in the accident the motor cycle was involved but the owner and insurance company of the motor cycle were not made party to the claim petition, which was necessary. It was contended that the accident took place in between two vehicles and under these circumstances the principle of contributory negligence should be applied. It was further contended that the claimants have wrongly shown income of the deceased. It was submitted that protection under Sections 170 & 149 of the M.V. Act is required to be given to the Insurance Company. It was prayed in the reply that the claim qua Insurance Company be rejected.

4. The Tribunal after hearing both the parties, framed as many as 5 issues including the issue of relief. The claimant in support of his claim got recorded statements of A.D.1 claimant Ramji Lal himself, A.D.2 Sunil Saini and also produced 13 documents in documentary evidence. The Tribunal after hearing both the parties and perusing the evidence and material available on record

passed the impugned award granting a total compensation of Rs. 2,87,800/- under the different heads. Hence this appeal.

5. Learned counsel for the appellants submitted that the learned Tribunal has erred in deciding issue No. 4 while ignoring the provisions of M.V. Act has given recovery rights to the Insurance Company on the ground that the driver of the offending vehicle did not possess valid driving licence to drive the vehicle in question, whereas driving licence of respondent No. 1 (driver) was produced in evidence, whereby he was authorised to drive the light motor vehicle under the provisions of the M.V. Act and the vehicle involved in the accident was a Tempo which comes under the definition of light motor vehicle. He submitted that the learned Tribunal has committed error in assessing income of the deceased as Rs. 2190/- per month, whereas at the time of accident the deceased was doing work of Foreman as also work of selling the dairy products and by which he was earning more than Rs. 6000/- per month. He contended that the learned Tribunal has committed error in not properly applying the multiplier of 15 looking to the age of the deceased who was at the time of accident of 25 years, assessing deduction at 1/3rd on self expenses. He contended that at the time of accident, the deceased was 25 years of age and was earning Rs. 6000/- per month and if he would have been alive then certainly he would have had a better future but the learned Tribunal has not awarded any amount on future prospects and on other heads. The counsel relied upon judgments of Hon''ble Apex Court rendered in the case of Rajesh and Others Vs. Rajbir Singh and Others, and Santosh Devi Vs. National Insurance Company Ltd. and Others, .

6. Per contra, learned counsel for the respondent (Insurance Company) submitted that the learned Tribunal has not committed any illegality in passing the impugned award. He submitted that the learned Tribunal after considering each and every aspect of the matter passed the impugned award, which is just and reasonable and no interference is required by this Hon''ble Court in the impugned award. He also contended that the Tribunal ought not to have directed the Insurance Company to pay and then to recover the same from the owner/driver; nevertheless he contended that the appellant should have any grudge in so far as direction for recovery is concerned from the owner/driver. He also relied upon the judgments of the Hon''ble Apex Court rendered in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

7. None appeared on behalf of owner and driver though the notices stand duly served upon them.

8. I have considered the arguments advanced by both the parties and perused the impugned award as well as material available on record.

9. The learned Tribunal while deciding Issue No. 1 has held that the burden to prove this issue was on claimants for which they produced eyewitness Sunil Saini (A.D.2), who stated that on 10.10.2005 at the time of accident at about 8:00 O''

Clock he was coming to Alwar from Umren on his motor cycle after meeting his friend then this incident took place in front of him. A Tempo which was going from Alwar to Jaipur Road bearing No. R.J.-02/G A-0184 which was being driven rashly and negligently by driver of the tempo and on account of which it hit deceased Narayan from wrong side due to which the deceased Narayan''s head, eye and nose were badly damaged and he and deceased''s father and relatives took him to hospital, where after some time he died. The learned Tribunal after finding his evidence reliable and corroborated by documents exhibited by it has decided this issue in favour of the claimants holding that due to rash and negligent driving by the non-petitioner No. 1 on 10.10.2005 the accident took place in which deceased Narayan died.

10. Issue No. 3 was decided by the Tribunal in favour of claimants on the basis of notice under Section 133 M.V. Act and its reply, according to that the non-petitioner No. 1 (driver) was under the employment and for his benefit of non-petitioner No. 2 (registered owner of the vehicle) driving the offending vehicle at the time of the accident.

11. As regards Issue No. 4 is concerned, the burden to prove this issue was on the non-petitioners. The non-petitioners No. 1 & 2 in their reply stated that there was no fault or negligence on part of the Tempo driver, but to prove this fact, no evidence was led on their behalf. The non-petitioner No. 3 Insurance Company raised a specific objection in their reply that there was no valid licence at the time of accident in possession of the driver of the offending vehicle. The certified copy of the driving licence (Shahjad) was produced before the Tribunal but on perusal of the same, it is clear that the holder of this licence was authorised to drive motor cycle but it cannot be accepted that he was authorised to drive loading vehicle. The Insurance Company inquired about the licence and came to know that the driver who caused the accident did not possess a valid licence to drive a loading Tempo and, therefore, it was clearly against the insurance conditions and in these circumstances, the compensation paid by the Insurance Company will have a right to recover the same from the owner of the vehicle. Therefore, the learned Tribunal decided this issue partially in favour of the non-petitioner No. 3 Insurance Company. The appellant should not have grudge on this issue.

12. As regards Issue No. 2 is concerned, the claimants made claim of Rs. 87,45,000/- as compensation. The father of the deceased (A.D.1) in his affidavit stated that his son was a healthy and laborious young boy and was working as Foreman in the National Product Broshing Company situated at Delhi Road and was earning Rs. 3000/- per month and after adding bonus and overtime work, he was getting salary of Rs. 4500/-. He was also earning Rs. 2500-3000 per month additionally from running a Dairy for which he kept 5-7 cows and 8-10 she buffalo. His son was holder of Mechanical Diploma from I.T.I and being the eldest son he was bearing all family expenses. The Tribunal found that the claimant did not produce specific books of accounts or salary certificate and also the

certificate of Diploma and came to the conclusion that deceased was at the time of accident of 25 years old and fixed the income on notional basis at Rs. 73/- per day, in my view, on the basis of evidence on record, the income cannot be adopted at Rs. 73/- per day and in my view it can be adopted at Rs. 4000/- per month as he was a Foreman and technically qualified as well.

13. With reference to future prospects, while the counsel for the appellant relied upon judgments rendered by the Hon''ble Apex Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, as also judgment in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, , the counsel for the Insurance Company relied upon the judgment rendered by the Hon''ble Apex Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, as also the judgment rendered in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . This Court in the case of Jagdish & Ors. v. Abdul Habib & Ors. (S.B. CIVIL MISC. APPEAL NO. 3690/2008) decided on 4th March, 2014 has considered this issue at length after considering the judgments rendered by the Hon''ble Apex Court in the case of Rajesh and Ors. v. Rajbir Singh and Ors. (supra), Santosh Devi v. National Insurance Company Ltd. and Ors. (supra), Reshma Kumari & Ors. v. Madan Mohan & Anr. (supra), Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (supra) as also the latest judgments of the Hon''ble Apex Court in the case of Sanjay Verma Vs. Haryana Roadways, , G. Dhanasekar v. M.D., Metropolitan Transport Corporation Ltd. (Civil Appeal Nos. 2008-09/2014 arising out of SLP Nos. 35565-35566 decided on 12.2.2014, Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, and also earlier judgments rendered by this Court in the cases of RSRTC Vs. Pusha Ram and Others, , Savita Sharma Vs. Kailash Chand, and this Court in the case of Sona & Ors. v. Ajit Mohammad & Ors. (CMA No. 3120/2009) decided on 18.9.2013. In my view, considering the above authorities, the future prospects is to be allowed both in case of a person who had permanency in employment may be government or otherwise so also to be allowed in a case of self employed person with having sufficient stability and steadiness in source of income and can be allowed in the case, where a person may be earning on daily basis, monthly basis or even seasonal basis as they also increase their income/ charges after some time as the cost of living increases and the prices of essentials go up. The Government also increases wages as also other emoluments on periodical basis, based on the index, accordingly it would be appropriate to allow future prospects as it can be said that there was steady income.

14. Now, scrutinizing the facts of the instant case in the light of above proposition, it emerges that the deceased was working as Foreman in a Company on a salary of Rs. 4000/- per month and his salary would have been increased over the years and can be said to be steady income. Therefore, in the light of above facts and the judgments referred to supra, the future prospects is directed to be awarded. Since the deceased was aged about 25 years, therefore, he would be entitled to increase of 50% of the income.

15. After considering the judgment of the Hon''ble Apex Court in Sarla Verma (supra), in my view, though the Tribunal is justified in applying multiplier on the basis of the age of parents and not the age of the deceased, who was a bachelor but multiplier is to be applied on the base of age of lower of the parents father or mother and in instant case for the age of 42 years(mother) the multiplier would be 14.

16. Since the deceased was a bachelor, therefore, the deduction is required to be worked out at 50% instead of 1/3rd as applied by the Tribunal in view of the judgments supra.

17. In my view the amount allowed at Rs. 20000/- for mental agony, pain, love and affection appears to be low and I would like to enhance it from Rs. 20000/- to Rs. 25000/-. On account of funeral expenses, I deem it proper to allow an amount of Rs. 5000/-. In view of the above, the claim is required to be modified in the light of the above findings. Accordingly, the amount awarded as per this appellate order would be as under:--

18. Accordingly, the claim is enhanced from Rs. 2,87,800/- as allowed by the Tribunal to Rs. 5,34,000/-, as above.

19. Since the amount of Rs. 2,87,800/- has already been paid by the Tribunal, the Tribunal shall make endeavour to pay/deposit the balance amount of Rs. 2,46,500/- within a period of two months from the date of receipt of certified copy of this order along with interest @ 6% p.a. from the date of the award, which shall be calculated by the Tribunal on the enhanced claim.

20. Thus, the appeal is partly allowed. The impugned order/award dated 31.1.2007 is modified to the extent that the enhanced amount of compensation of Rs. 2,46,500/- with interest will be paid by the non-petitioner including the Insurance Company. The Insurance Company would be well within its right to recover from the owner and driver. The Tribunal is directed to deposit 95% of the enhanced amount equally along with interest rounded off to the nearest thousands in the separate account of claimants Nos. 1 & 2 father & mother of the deceased in the Monthly Income Scheme (MIS) in the nearest Post Office for a period of five years. The balance amount remaining after the above, shall be given to the father and mother by account payee Bank Drafts. It is made clear that the appellants will be allowed interest only as aforesaid and full amount on its maturity and will not be allowed to take loan or pledge the same with Post Office or raise loan on the said MIS. The appeal is partly allowed, as indicated above.

