
(2007) 02 RAJ CK 0105

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 636 of 1997

Shambhu Dayal and Others

APPELLANT

Vs

Sohan Lal and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Citation : (2007) 2 WLN 143

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—This appeal is against the award dt. 22.03.1997 passed by the Motor Accident Claims Tribunal, Sawai Madhopur whereby the learned Tribunal has awarded a compensation of Rs. 1,19,000/- to the appellant No. 1 for the death of his wife and to the appellants No. 2 to 7 for the death of their mother Dwarka Devi.

2. In a nutshell, the facts of the case are that on 29.05.1995 the wife of the appellant No. 1 and the mother of the appellant Nos. 2 to 7, Smt. Dwarka Devi was travelling with few other persons in a jeep, bearing Registration No. RJ-20/G-1541, for Ganga Snan to Soronji (U.P.). While jeep was crossing near village Nagla Mevati on Bharatpur road, a tanker, bearing Registration No. RJ-20/G1541, being driven in a rash and negligent manner, collided with the jeep. Three persons including Smt. Dwarka Devi expired in the said accident. Since the appellants were husband and children of the deceased, they filed a claim petition before the learned Tribunal. While respondent Nos. 1 and 2 filed a composite reply, the respondent No. 3, New India Insurance Company Ltd., filed a separate reply. After going through the pleadings of both the parties, the learned Tribunal framed as many as six issues. In order to prove their case, the appellants examined three witnesses and submitted six documents. On the other hand, the insurance company examined only a single witness to prove the Insurance Policy. After going through the oral and documentary evidence, the learned Tribunal granted a compensation as stated above vide its award dt. 22.03.1997. Since the

appellants are aggrieved by the said award, since they want the compensation amount to be enhanced, they filed the present appeal for enhancement of the compensation amount before this Court.

3. Mr. Hamendra Goyal, the learned Counsel for the appellants, has raised various contentions firstly, according to the Post-mortem Report (Ex.5), the deceased was 35 years old at the time of her death. Therefore, according to the Schedule-II attached to the Motor Vehicles Act, 1988 (henceforth to be referred to as "the Act", for short), the multiplier of 17 should have applied by the learned Counsel for the Tribunal. However, the learned Tribunal has applied a multiplier of only 13 without giving any cogent reasons for such application. Secondly, according to the appellants, the deceased was earning Rs. 2,000/- per month, as she was engaged in tailoring works. However, the learned Tribunal has taken her monthly income as Rs. 1,000/-. Therefore, the assessment of the income of the deceased is on the lower side. Moreover, thirdly according to the case of Lata Wadhwa and Others Vs. State of Bihar and Others, , the dependency should be calculated as Rs. 3,000/- per month in case a house wife is in between 30 to 35 years. Furthermore, in the case of Shankar Lal v. R.S.R.T.C. and Ors. a Division Bench of this Court has quantified the services rendered by a housewife as amounting to Rs. 1,000/-. Therefore, according to the learned counsel, since the deceased was also a housewife, her contribution to the family should be taken as Rs. 1,000/- per month. He has further contended that although there are seven appellants, and one of them namely Vishnu is physically challenged, yet the learned Tribunal has granted only Rs. 15,000/- for loss of love and affection. Lastly, he has contended that no compensation has been paid either for transportation of the dead body from Bharatpur to Sawai Madhopur where the appellants resided, or for the funeral expenses incurred by them.

4. On the other hand, Mr. G.K. Bhartiya, the learned Counsel for the respondent No. 3, has contended that income assessed by the learned Tribunal is absolutely just and valid. Moreover, a compensation of Rs. 1,19,000/- is just and reasonable considering the fact that the award was passed a decade back.

5. Mr. A.K. Pareek, the learned Counsel for the respondent No. 6, has also supported the impugned award.

6. We have heard the learned counsels for the appellants and respondent Nos. 3 and 6 and have perused the impugned award.

7. According to the Post-mortem Report (Ex.5), the age of the deceased was 35 years at the time of her death. According to the Schedule-II of the Act, in case the age of the victim is between 30 to 35 years, then the multiplier of 17 should be applied. Learned Tribunal has not given any reason, much less a cogent one, for applying a multiplier of 13 in the present case. Therefore, this Court has no option, but to apply a multiplier of 17 in consonance with the Schedule-II of the Act.

8. Since the appellant have not submitted any evidence to prove the fact that the

deceased was earning Rs. 2,000/- per month, the assessment of the income @ Rs. 1,000/- per month seems to be just and reasonable. However, considering the fact that the deceased was a housewife, she would have contributed her services to the maintenance of the household and towards looking after the minor children and the husband. Thus, it can safely be presumed that she would have contributed her services to the tune of Rs. 1,000/- per month. Therefore, the loss of dependency should have been calculated as Rs. 2,000/- per month.

9. Considering the fact that the appellant No. 1 was hardly 40 years old and has lost his wife, considering the fact that some of the children were minor when they lost their mother, considering the fact that one of the appellants, Vishnu, is physically challenged child, the compensation paid in the twin categories of love and affection and loss of consortium, certainly seems to be on the lower side. Therefore, this Court is inclined to increase the compensation from Rs. 15,000/- to Rs. 30,000/- in these twin categories.

10. Furthermore, as far as the transportation of the body and the funeral expenses incurred by the appellant are concerned, this Court further grants a compensation of Rs. 5,000/- to the appellants.

11. In the result, while allowing this appeal, the impugned award dt. 22.03.1997 is modified to the extent as under:

2000 x 12 x 17 = Rs. 4,08,000.00 Amount under the head of love and affection and consortium Rs. 30,000.00 Amount under the head of transportation of the Body Rs. 5,000.00 Thus, Total Amount comes Rs. 4,43,000.00 Less: Amount Awarded by Tribunal Rs. 1,19,000.00 Thus, enhanced amount comes Rs. 3,24,000.00

12. The respondents No. 3 and 6 shall be jointly and severally liable to pay the enhanced compensation amount along with an interest @ 12% per annum from the date of filing of the claim petition till 22.03.1997, the date of the award, and to pay a further interest @ 9% per annum from 01.07.1997, the date of filing of the present appeal, till the date of realization. The learned Tribunal is directed to recover the said amount from the respondent Nos. 3 and 6 respectively, the insurance companies involved in this case, within a period of two weeks and to issue notice to the appellants and to deliver them the compensation amount within the said period.