
(2004) 12 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 846 of 1994

Sharda and Others

APPELLANT

Vs

Gopal and Others

RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Citation : (2005) 2 ACC 865 : (2006) ACJ 2634

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Advocate : Sandeep Mathur and S.R. Joshi, for the Appellant; Ganesh Joshi, for the Respondent

Final Decision : Allowed

Judgement

Dalip Singh, J.—This appeal has been filed against the award dated 5.5.1994 passed by the Motor Accidents Claims Tribunal, Neem-ka-Thana, District Sikar (hereinafter referred to as "the Tribunal") in Claim Petition No. 20 of 1989 by which a sum of Rs. 3,64,360 has been awarded as compensation to the appellants.

2. The brief facts giving rise to this appeal are that one Chiranji Lal deceased was travelling in a jeep bearing registration No. ROQ 164 being driven by Gopal, driver, respondent No. 1 which met with an accident as a result of which Chiranji Lal deceased suffered injuries and on account of said injuries he died in the said accident. The appellants are the legal representatives of the deceased Chiranji Lal. The deceased at the time of accident was employed as a Telephone Operator in the P&T Department and drawing a salary of Rs. 1,611 per month. The learned Tribunal taking into consideration the future prospects of service and particularly, the fact that he was employed in a government job, held the income of the deceased for the purpose of determining the compensation to be as Rs. 3,300 per month as at the time of death of the deceased, he was 32 years of age and had a sufficient long career with the prospects of drawing higher salary and promotions could not be denied. Learned Tribunal held the dependency to the

family to be Rs. 2,500 per month and adopted a multiplier of 14. After calculating the annual dependency to be Rs. 30,000 and multiplied by 14, a figure of Rs. 4,20,000 had been arrived at by the Tribunal. From the aforesaid figure, the amount of Rs. 605 per month which was his pension amount deducted on account of the fact that the claimants would receive family pension. Consequently, the Tribunal awarded a sum of Rs. 3,64,360 as compensation.

3. The submission of the learned Counsel for the appellants is that the learned Tribunal has erred in making deduction on account of the fact that Rs. 605 per month was to be received by the family including the appellants as family pension on account of the death of the deceased. In this connection learned Counsel for the appellant has placed reliance upon the judgment of Hon''ble Supreme Court rendered in the case of N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 . The learned Counsel for the appellants has drawn my attention to para 5 of the said judgment wherein their Lordships have held as under:

The High Court next proceeded to evaluate the pensionary benefits which the widow, appellant No. 1, would enjoy. Appellant No. 1 as the widow of the deceased is entitled to pension at the rate of Rs. 120 p.m. for a period of 7 years whereafter the amount will taper down. The High Court evaluated the monetary benefit of the pension and reduced the amount of compensation by Rs. 10,000. We are unable to appreciate this reduction. We find no justification for it.

4. In the light of the above pronouncement and the law laid down by the Hon''ble Supreme Court the deduction of Rs. 605 per month made by the Tribunal is not sustainable and the appellants would be entitled to claim compensation of loss of income without deduction of the said amount of Rs. 605.

5. The learned Counsel for the appellants has further submitted that in the facts and circumstances of the instant case, the multiplier of 14 was wrongly applied and keeping in view the provisions contained in the Second Schedule to the Motor Vehicles Act, 1988 in the case of the deceased between the age group of 30 and 35 years, multiplier of 17 has been prescribed which as per learned Counsel for the appellants ought to have been applied.

6. In reply to the aforesaid submissions, learned Counsel for the respondents has submitted that the learned Tribunal has erred in taking into consideration the future prospects and taking the income for the purposes of determination of the compensation to be Rs. 3,300 per month in place of Rs. 1,611 which was proved on record as per the salary certificate of the deceased. The learned Counsel for the respondents has also submitted that assuming but not admitting that the income of the deceased was Rs. 3,300 per month, it is a settled law that 1/3rd amount ought to have been deducted for personal expenses and Tribunal was not right in taking the dependency of the family as Rs. 2,500 as after deduction 1/3rd of the amount of Rs. 3,300 the dependency would be Rs. 2,200 only. So far as the submissions of learned Counsel for respondents is concerned, their

Lordships of the Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, of the judgment have held that the future prospects of advancement in life and career should also be counted in terms of money to augment the multiplicand. In the said case of General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas (supra) the actual income of Rs. 1,032 per month was enhanced on the basis of taking into account the future prospects and was estimated as Rs. 2,000 per month for the purpose of deciding the compensation. As such the contention of the learned Counsel for respondents has no force and the same deserves to be rejected. Further so far as the second submission is concerned, I am in agreement that in fact, 1/3rd of the amount from the monthly income ought to have been deducted and consequently, the dependency of the family in the facts and circumstances of the case, where the monthly income of the deceased has been assessed as notional income at Rs. 3,300 per month, the dependency after deducting 1/3rd amount would come to Rs. 2,200 and it is on this basis that compensation for loss of earnings ought to have been decided.

7. In view of the aforesaid discussions, the loss of income on account of the death of the deceased in the said accident, his determination of income is as Rs. 2,200 per month multiplied by 12 which is equal to Rs. 26,400 or the annual income and adopting multiplier of 17 years as has been prescribed in the Second Schedule to the Act of 1988 for the deceased in the age group of 30-35 years as the deceased was 32 years of age, the amount of compensation for loss of earnings is calculated as Rs. 4,48,800 (rupees four lakh forty-eight thousand and eight hundred).

8. Since the Tribunal has awarded an amount of Rs. 3,64,360 as the amount for loss of earnings and this amount along with other amounts has already been paid in terms of the award passed by the Claims Tribunal along with interest the amount of Rs. 3,19,360 (rupees three lakh nineteen thousand and three hundred sixty) deserves to be reduced from Rs. 4,48,800 (rupees four lakh forty-eight thousand and eight hundred) and only balance amount is payable which come to Rs. 1,29,440 (rupees one lakh twenty-nine thousand and four hundred forty).

9. Accordingly, this appeal is allowed to the extent that appellants would be entitled to receive an amount of Rs. 1,29,440 (rupees one lakh twenty-nine thousand and four hundred forty). The respondent would pay to appellants by way of DD/crossed cheques or to deposit with the Tribunal the amount of Rs. 1,29,440 within a period of three months from today. In case, the said amount is paid, appellants would also be entitled to get interest on the said amount at the rate of 6 per cent per annum, i.e., from the date of filing of this appeal, i.e., 4.7.1994. However, in case, the respondents fail to pay or deposit the said amount within the stipulated period of 3 months, the appellant would be entitled to get the said amount along with interest to be paid to them at the rate of 9 per cent per annum w.e.f. the date of filing of claim petition, i.e., 30.5.1989.

10. There is no order as to costs.