

(2017) 08 RAJ CK 0044
In the Rajasthan High Court
Case No : 173 of 2001

Smt. Anchi Devi W/o Shiv Ram @ Suva Ram Salvi	APPELLANT
Vs	
Shri Islam S/o Mehtab Khan	RESPONDENT

Date of Decision : 29-08-2017

Acts Referred:

Citation : (2017) 08 RAJ CK 0044

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : V.S. Rajpurohit, Sandeep Saruparia

Judgement

1. This appeal is directed against judgment and award dated 04.12.1999 passed by Motor Accident Claims Tribunal, Rajsamand ("the Tribunal"), whereby, the Tribunal has awarded a sum of Rs. 1,59,000/- as compensation alongwith interest @ 12% per annum from the date of application i.e. 07.08.1997.
2. Application for compensation was filed by wife, four children and parents of deceased Shiv Ram alias Suaram with the averments that the deceased was going on foot from Kamalighat when the offending vehicle Truck No. HR-38-9293 came from behind, which was being driven rashly and negligently by Driver of the said Truck and struck Suaram, resulting in grievous injuries, to which, he succumbed. It was claimed that the deceased was aged 35 years, he used to earn Rs. 5,000/- per month. Based on the said averments compensation to the tune of Rs. 16,10,000/- was

claimed.

3. The application was resisted by the Insurance Company by filing reply.

4. The Tribunal framed four issues. On behalf of claimants two witnesses were examined and on behalf of Insurance Company no evidence was led.

5. After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by Driver of the Truck. While assessing the amount of compensation, the Tribunal came to the conclusion that the age of the deceased was 38 years; the claim of the claimants that the deceased was working as construction contractor was not accepted and as the claimant - wife of the deceased claimed that she was getting Rs. 30/- per day as wages, the income of the deceased was assessed at Rs. 1,500/- per month and after deducting Rs. 300/- towards personal expenses, a multiplier of 10 was adopted and a sum of Rs. 1,44,000/- towards loss of income was awarded, Rs. 15,000/- towards loss of consortium was awarded to the wife and in all a sum of Rs. 1,59,000/- was awarded.

6. It is submitted by learned counsel for the appellants that the Tribunal awarded a meager sum as compensation to the claimants, which is contrary to the material available on record. It was submitted that the pleadings and oral evidence of the claimants was consistent that the deceased was working as construction contractor and used to earn Rs. 5,000/- per month and the Tribunal without any reason did not accept the said aspect of the matter and has arbitrarily assessed the income of the deceased at Rs. 1,500/- per month and, therefore, the same deserves to be modified. Further submissions were made that the

Tribunal has wrongly applied multiplier of 10, the small amount awarded towards loss of consortium and denial of amount for loss of love, affection and care to the children and parents of the deceased is contrary to the law laid down by Hon"ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation : (2009) 6 SCC 121 and, therefore, the award impugned deserves to be modified.

7. Despite service no one is present on behalf of respondents.

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

8. The claimants though claimed that the deceased was working as construction contractor, except for the oral testimony of Smt. Anchi, no other witness was produced to support the contention and further no material with regard to the fact that the deceased was involved in such work was produced. In view thereof, the Tribunal was justified in coming to the conclusion that the claimants failed to establish the fact that the deceased was working as construction contractor and, consequently, used to earn Rs. 5,000/- per month.

9. However, the assessment made by the Tribunal of the income of the deceased based on the statement of Smt. Anchi that she was getting daily wages at Rs. 30/- per day appears to be misplaced. The Tribunal taking the daily wages of the deceased at Rs. 50/- has assessed the income at Rs. 1,500/-, which looking to the number of persons he was supporting in the family, appears to be on lower side and, therefore, the same is enhanced to Rs. 2,100/- per month.

10. The deduction of 1/5th by the Tribunal looking to the number of dependents on the deceased, appears to be just and proper,

however, the multiplier adopted of 10 is contrary to the judgment in the case of Sarla Verma (supra) according to which, for persons aged 36 to 40 years, a multiplier of 15 is required to be adopted.

11. In view thereof, the claimants would be entitled to compensation for loss of income at Rs. $2,100 \times 12 \times 15 = 3,78,000 - 75,600 = 3,02,400/-$.

12. So far as the amount of consortium awarded and denial of amount towards love, affection and care is concerned, the amount of consortium awarded is on the lower side, which is enhanced to Rs. 25,000/- and the claimants - children and parents of the deceased are entitled to compensation for loss of love, affection and care at Rs. 10,000/- each. The Tribunal has not awarded any amount towards funeral expenses, which in the circumstances of the case, is assessed at Rs. 2,500/-.

13. In view thereof, the claimants would be entitled to a total compensation of Rs. 3,89,900/-, which is rounded off to Rs. 3,90,000/-.

14. Consequently, the appeal is partly allowed. The award dated 04.12.1999 is modified to the extent that instead of a sum of Rs. 1,59,000/-, the claimants would be entitled to a sum of Rs. 3,90,000/- alongwith interest @ 7% per annum from the date of application i.e. 07.98.1997.

15. The amount of enhanced compensation alongwith interest be paid to Smt. Anchi Devi wife of the deceased only. Out of the total amount of compensation, 70% amount be paid in the saving bank account of Smt. Anchi and 30% amount be placed in Fixed Deposit for a period of three years.