

(2008) 04 RAJ CK 0110
In the Rajasthan High Court

Smt. Kamla and Others

APPELLANT

Vs

Rajasthan State Road Trans. Cop. and Another

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Citation : (2008) 04 RAJ CK 0110

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Judgement

N.P. Gupta, J.—This appeal has been filed by the claimants against the award of the Motor Accidents Claims Tribunal Hanumangarh, dt. 1.10.1996, awarding a compensation of Rs. 2,52,000/-, on account of death of Hari Krishan, who died in an accident taking place on 25.9.1993, and was 35 years of age at the time of accident. The claimants are the widow and three minor children, of the age varying from 10 to 14, at the time of claim petition.

2. Since the issue relating to negligence has been decided in favour of the claimants, and there is no cross objection or cross appeal on the side of the defendants, therefore, I need not go into the facts regarding negligence, and would better concentrate on the issue relating to quantum, finding whereon is recorded by the learned Tribunal in issue No. 2, and are precisely under challenge.

3. In the claim petition it is alleged, that the deceased was carrying on business, and was undertaking agriculture operations, and was earning a total income of more than Rs. 3,500/- per month, and that, according to the income tax return of the year 1993-94 the income is Rs. 42,680/- per year. On that basis a sum of Rs. 14,40,000/- has been claimed for 40 years loss of income. Then, a sum of Rs. 14,261/- has been claimed in para-14 as medical expenditure, as the deceased had to be carried from Hanumangarh Junction to Ludhiana for treatment. The income tax returns for the assessment year 1992-93 and 93-94 have been produced on record. According to which, in the assessment year 1992-93 the income is assessed at Rs. 26,220/-, while in the return of the assessment year

1993-94 the income is shown at Rs. 21,826.29, and agriculture income has been shown to be Rs. 20,850/-. Then, certain documents have been filed regarding expenditure incurred in purchase of medicines, investigation, medical examination fees, hiring of the vehicle in which he was taken, and ambulance charges, and so on.

4. The learned Tribunal has found, that so far as the agriculture income is concerned, according to Section 104 of the Tenancy Act only 1/6th of the product is receivable by the owner, and there is no material evidence to show that the claimant widow would give the land to any-body-else for cultivation, rather the land will continue to remain with dependents, and they will only be deprived of the supervision, which would have been undertaken by the deceased, and looking to the quantum of land being two bighas, loss has been assessed at Rs. 400/- per month. Then, regarding income from business it has been considered, that in the income tax return of 1992-93, it is shown to be Rs. 26,220/-, while in the return of the year 1993-94 it has been shown to be Rs. 21,830/-. Thus, the income has rather reduced. However, it was considered that the income was also likely to be increased, and on an average, monthly income of the deceased was taken to be Rs. 2,000/- per month. Thus, the total income has been assessed at Rs. 2400/- per month. Then, deducting 1/3rd on personal expenditure, and another Rs. 200/- for the additional facilities, that may be enjoyed by him, being head of the family, the dependency has been assessed at Rs. 1400/- per month, and employing a multiplier of 14, compensation has been awarded at Rs. 2,35,200/-. Then, adding the amount of consortium and cremation charges etc., the compensation has been assessed at Rs. 2,52,200/-. Regarding the expenses, it has been found, that no vouchers have been produced, and therefore, the amount cannot be awarded for medical expenditure. Likewise, regarding transportation also it has been found, that in absence of evidence and proof, that cannot be awarded.

5. Assailing the impugned judgment, it is contended, placing strong reliance on judgment of Hon"ble the Supreme Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas reported in RLW 1995(2)19, that in such cases the monthly income was required to be enhanced considering future prospects. Then, after making deduction for personal expenditure upto 1/3rd, looking to the age of the deceased, appropriate multiplier of 18 should have been employed, and the compensation should have been awarded. Thus, the assessment of compensation is grossly inadequate. The other submission made is, that the deceased was having 2 bighas of Nahari land, and had derived income of Rs. 26,200/- therefrom in the assessment year 1992-93, and had earned Rs. 20,850/- in the year 1993-94, in such circumstances awarding Rs. 400/-per month as loss of agriculture income is grossly inadequate. Then it is contended, that claimants had produced on record various documents about various expenditure incurred in transportation, charges on medicines, and other hospital charges, but none of which receipts have been denied by the other side, and the claimants have clearly deposed to have spent Rs. 14,000/-under this

head, on which there is no material cross examination, and no evidence has been led in rebuttal either. As such, the learned Tribunal was in error in declining to award any amount under this head.

6. On the other hand the learned Counsel for respondent has supported the impugned award.

7. I have considered the submissions, and have gone through the impugned award, and the record closely.

8. Coming to the question of award of compensation under the head of expenditure incurred in transportation from Hanumangarh to Ludhiana and back, medicines, and other medical expenditure, it would suffice to say, that in the claim petition the claimants had clearly pleaded in para-14 to have spent Rs. 14,261.40, while in the reply this has not been controverted specifically, rather the reply is simply alleging that the claim is grossly inflated. Then, the claimants have produced the receipts (photo stat copies) on record, and none of them have been denied, whether by way of admission denial of the documents, or during course of evidence. The documents in this regard were produced by the claimants along with the claim petition itself i.e. on 18.12.1993, as appears from the list of documents. In such circumstances I find, that the learned Tribunal was in error in not awarding the expenses incurred under this head, more so when transportation from Hanumangarh to Ludhiana and back, and the victim having undergone treatment, are the facts which are not in dispute. In that view of the matter, I have totaled up the various amounts represented by various receipts available on record, and the total amount in that regard comes to Rs. 8810/-. Accordingly, the appellant is entitled to be awarded this sum of Rs. 8810/-, under the head "medical expenses including conveyance, transportation from Hanumangarh to Ludhiana and back".

9. Then, coming to the main contention about assessment of income and multiplier. In this regard in the claim petition all that has been alleged is, that the deceased was carrying on business, and was also undertaking agricultural operations, and the total income from both the sources was Rs. 3500/- per month, and this is what has been deposed while in the witness box as well, by the claimant, and her witnesses. Significantly there is no material on record to show as to what was the nature of land, as to whether it was irrigated, or Nahari or Barani, or the like. Then, a look at the income tax returns does show, that the return of the year 1992-93 shows a total income of Rs. 26,220/-. Learned Counsel tried to read from this return, that this Rs. 26,220/- was the income of the deceased from agriculture, by reading columns, and showing, that this amount is mentioned under the head net agricultural income. In my view, the reading is not proper, inasmuch as in the first column the income of Rs. 26,220/- has been shown as income u/s 143(1)(a). This figure has been repeated as a total amount for the purpose of tax, and it appears that in carbon copy the amount appears to have been mentioned in the upper line. It is not the case, that in this case the deceased was not carrying on any business, or had no

income from the business, so as to claim, that this was the income from the agriculture, and not from business. So far as the return for the year 1993-94 is concerned, this return is filed much after the death of deceased, inasmuch as the deceased died in September, 1993, and return has been filed in December, 1993. In that view of the matter, simply because in this return Rs. 20,850/- has been shown as agricultural income, it cannot be said to be tantamounting to any thing better than itself serving admission, and therefore, it cannot be relied upon.

10. In that view of the matter, in my view, it cannot be said, that the learned Tribunal was in error in assessing the income of the deceased at Rs. 2000/- from business, and Rs. 400/- from agriculture. Learned Counsel has stressed much on the fact, that the claimant has deposed his income to be Rs. 3500/-, on which there is no material cross examination, and no evidence has been led in rebuttal either. Therefore, there is no reason not to accept that evidence as such. In my view, that cannot be said to be rule of thumb, that whenever there is no cross examination, or no evidence led in rebuttal, whatever amount is deposed by the claimants, is always to be accepted on the face value. In the present case, a look at the return Ex-1 by itself clearly shows, that the figure of Rs. 3500/- as claimed to be income is not supportable by it. Thus, the finding in this regard does not require any interference.

11. So far as the selection of multiplier, and increasing the amount of income by considering future prospects, and then making deductions, as done in Susamma Thomas's case is concerned, after Susamma Thomas' case much water has flown under the river, and Hon'ble the Supreme Court has now consistently been taking the view of applying much lesser multiplier, even interfering with the awards made by the learned courts below, including the High Court, consistently, after considering the judgments in Susamma Thomas and Trilok Chandra's case (U.P. State Road Transport Corpn. v. Trilok Chandra reported in JT 1996(5) SC 356 , and all other cases, and after considering various English Judgments. Not only this, it has also been ruled, that future prospects of income cannot be taken into account, for the purpose of assessing dependency. In this regard reference may be made to the recent judgments of Hon'ble the Supreme Court, in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , Oriental Insurance Company Ltd. Vs. Sorumai Gogoi and Others, , and V. Subbulakshmi and Others Vs. S. Lakshmi and Another,

12. That being the position, even the multiplier as employed by the learned Tribunal is rather on the higher side, but since there is no cross appeal, or cross objection, there is no scope for reduction. However, considering the totality of circumstances, even making some re-calculations here and there, the total awarded amount of compensation, under the head of loss of income/dependency, does not require any interference. Therefore, no interference is required to be made in this regard.

13. Consequently, the appeal is partly allowed, and while maintaining the award as made by the learned Tribunal, an additional amount of Rs. 8810/- is awarded by way of expenses incurred in transportation from Hanumangarh to Ludhiana and back, and for the medical expenditure etc., along with rate of interest as awarded by the learned Tribunal.