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(2013) 01 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 688 of 1999

Smt. Rajesh Choudhary and Others — APPELLANT

Vs

Manmohan Rai and Another — RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Citation : (2013) 3 ACC 339 : (2014) ACJ 1785

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Dilip Kawadia, for the Appellant; Anil Bachhawat, for the Respondent No. 2, for the Respondent

Judgement

Hon''ble Mr. Arun Bhansali, J.—The present appeal has been filed by the claimant-appellants aggrieved by the award of the Motor Accident Claims Tribunal, Udaipur dated 15.07.1999 on the quantum of compensation awarded by the Tribunal. The Tribunal awarded compensation of Rs. 1,18,736/-, which is sought to be enhanced by the appellants. The appellant No. 1 Smt. Rajesh Choudhary is the widow and appellant Nos. 2 and 3 are sons of deceased Bhagwat Singh Choudhary. Brief facts giving rise to the filing of this appeal are that on 10.04.1996 an accident took place near Kumbha Nagar, Udaipur; wherein, a Truck belonging to respondent No. 1 collided with the Scooter being driven by Bhagwat Singh, who alongwith his wife were injured and ultimately during the treatment Bhagwat Singh expired on 15.04.1996.

2. A claim petition was filed before the Claims Tribunal inter alia claiming that deceased Bhagwat Singh was a healthy person and was of 31 years age, he was serving in the Women and Child Welfare Department, Government of Rajasthan as L.D.C. and was getting a monthly salary of Rs. 2,826/- and was likely to be promoted in future. A compensation of Rs. 7,36,800/- on account of loss of dependency, Rs. 30,000/- towards loss of consortium, Rs. 40,000/- for loss of love and affection, Rs. 30,000/- for mental agony, Rs. 20,000/- for the treatment, Rs. 3,485/- for carrying dead body to the native place and Rs.

5,000/- for funeral expenses was claimed. The claim was resisted by the Insurance Company only.

3. The Claims Tribunal framed several issues and in support of the claim examined appellant No. 1 as AW-1, Mohd. Sarif as AW-2 and Logar Singh as AW-3. However, no evidence was produced by the respondents.

4. The Claims Tribunals came to the conclusion that as the appellant No. 1 has been provided compassionate appointment as L.D.C. and was receiving a salary of Rs. 2,700/-, but as it was not clear as to when the appointment was granted to her, it granted compensation for three years calculating the salary of the deceased at Rs. 2,836/- and awarded a compensation of Rs. 1,01,736/- in this regard. The Claims Tribunals further awarded Rs. 10,000/- towards loss of consortium and love and affection, Rs. 5,000/- towards treatment and Rs. 2,000/- towards funeral expenses and, as such, awarded a sum of Rs. 1,18,736/- and further awarded interest @ 8% per annum from the date of filing of the claim petition.

5. I have heard the counsel for the parties.

6. It has been submitted by the counsel for the appellants that the learned Tribunal committed grave error in awarding a meager compensation merely on account of the fact that the appellant No. 1 has been provided compassionate appointment on account of the death of her husband Shri Bhagwat Singh. The multiplier of 3 adopted by the Tribunal was wholly arbitrary. It was further contended that the appellant No. 1 was working as an Anganwadi worker and was earning Rs. 350/- per month, which fact was also relevant and has not been taken into consideration at all. Further, the future prospects of the deceased have also not been taken into consideration at all.

7. The counsel for the appellants relied on the judgment reported at Amarjit Kaur and Others Vs. State of Punjab and Others, wherein, it has been held that deduction is not admissible on account of grant of compassionate appointment to the widow of the deceased and judgment of Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for the preposition that a multiplier of 16 should have been adopted and an addition of 30% should have been made on account of future prospects.

8. On the other hand, the counsel for the respondent No. 2 submitted that on admitted facts that the appellant No. 1 has been granted compassionate appointment on account of death of Shri Bhagwat Singh, the said aspect has to be duly considered while fixing the compensation. He relied on the judgment of Hon''ble Supreme Court in the case of Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others, Further, reliance was placed on a Division Bench judgment of this Court in the case of Chand Devi and Others Vs. Ajmat @ Kangari and Others, wherein, also the Division Bench has held that pay on account of appointment on compassionate ground cannot be ignored. Reliance was also placed on another judgment of this Court in the case of Rashmi Verma

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(Smt.) and Others Vs. Deewan Singh and Others, wherein, on account of grant of compassionate appointment, the reduction of multiplier from 17 to 15 was upheld.

9. I have considered the rival arguments advanced by both the counsel for the parties.

10. The facts about age of the deceased Bhatwat Singh and his salary being Rs. 2,826/- per month at the time of his death are not in dispute. It is also not in dispute that the appellant No. 1 has been provided compassionate appointment on the post of L.D.C., which deceased Bhatwat Singh was holding and was receiving a salary of Rs. 2,700/- per month. The view of the Tribunal on the aspect of compassionate appointment and awarding salary of the deceased for a period of three years only on account of the fact that it was not available on record as to when the appointment to the appellant No. 1 was granted is apparently incorrect and cannot be sustained.

11. The Hon''ble Supreme Court in the case of Bhakra Beas Management Boards (supra) has held that the benefits which claimant receives on account of the death or injury have to be duly considered while fixing the compensation and after considering the fact of grant of compassionate appointment confined the compensation awarded to Rs. 5,00,000/-. As such, it is apparent that grant of compassionate appointment is a relevant fact to be considered while awarding compensation and the same cannot be the basis for refusing the compensation. The view expressed by the Punjab and Haryana High Court in the judgment reported at Amarjit Kaur and Others Vs. State of Punjab and Others, being contrary to the view expressed by the Hon''ble Supreme Court, therefore, apparently does not lay down good law.

12. The claim of the appellants that the Tribunal should have awarded additional amount of compensation under the head of future prospects considering that if deceased was working as L.D.C., he would have progressed in his career and earned much more money than the emoluments that he was receiving. From the evidence and the statement of AW-2 Mohd. Sarif, it is proved that the deceased had the future prospects of being promoted and in that event receiving salary in the higher scale apart from receiving increments etc., in the course of time. However, at the same time, this fact cannot be lost sight that the compassionate appointment has been provided to appellant No. 1 and, therefore, by corresponding number of years apart from the fact that her income has to be taken as a factor to be detriment quantum of compensation, this has also be considered that by corresponding number of years she would also be gaining promotions, increments in her service career with passing time.

13. The Hon''ble Supreme court in the case of Sarla Verma (supra) held as under:-

24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the

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income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary or (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefore should be made only in rare and exceptional cases involving special circumstances.

14. In view of the ratio of the aforesaid judgment of Hon''ble Supreme Court in Sarla Verma''s case (supra), benefit of future prospects should be granted by adding 30% of the total income of the deceased, however, in the present case, this has to be considered alongwith a fact that claimant No. 1 has herself being appointed on compassionate basis on the same post of L.D.C. being held by her husband and difference of salary was only Rs. 126/- per month and, therefore, to balance that fact only 15% of the addition is considered appropriate to be made on the income of the deceased for future prospects.

15. Coming to the question that appellant No. 1 was herself working during the life time of deceased and earning a sum of Rs. 350/- per month, I am of the considered opinion that in the circumstances of the present case where the deceased Bhagwat Singh was getting a salary of Rs. 2,826/- per month and appellant No. 1 is getting salary of Rs. 2,700/- per month, the amount being earned by her as Anganwari Worker is of no consequence so far as determination of loss due to death of Bhagwat Singh is concerned.

16. Therefore, in view of the above, loss of income is determined at Rs. 2,826/-, out of which, 1/3rd amount should be deducted as self expenses and thereafter in view of judgment in the case of Rashmi Verma (supra) in place of a usual multiplier of 16 which is applicable, a multiplier of 14 is adopted for the purpose of arriving at a just compensation (1884x12x14) Rs. 3,16,512/-. Further as decided above, on adding future prospects @ 15% i.e. Rs. 47,476/- the amount of compensation comes to Rs. 3,63,988/- which is rounded off to Rs. 3,64,000/- to which the appellants are entitled. However, award of the Tribunal is maintained on other aspects i.e. Rs. 10,000/- towards loss of consortium and love and affection, Rs. 5,000/- towards treatment and Rs. 2,000/- towards funeral expenses. In the result, the appeal is partly allowed. The award passed by the Motor Accident Claims Tribunal, Udaipur dated 15.07.1999 is modified to the extent that appellants are entitled to a total compensation of Rs. 3,81,000/-

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together with interest @ 8% per annum on the enhanced amount only from the date of filing of the claim petition by the claimants i.e. 21.08.1996. The further directions issued by the Tribunal regarding apportionment of the amount of compensation among the three claimants i.e. 1/3rd each would also apply to the enhanced compensation. The respondents to make compliance of this order within a period of three months from the date copy of this order is produced before them. No costs.

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