(2008) 03 RAJ CK 0055

In the Rajasthan High Court

Smt. Rama Chohan and Others — APPELLANT

Vs

Shri Chhotu and Others — RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 03 RAJ CK 0055

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Judgement

K.S. Rathore, J.—The present civil misc. appeal u/s 173 of the Motor Vehicle Act, 1988 is filed by the claimants/appellant for enhancement of the compensation awarded vide impugned Award dated 16.07.96 by the Motor Accident Claims Tribunal, Beawar (for short ''the Tribunal'') in Claim Petition No. 132/1995, by which the claim petition filed by the claimants/appellants has been partly allowed and compensation to the tune of Rs. 1,48,000/- has been awarded in favour of the claimants/appellants.

2. Brief facts of the case are that on 18.05.95 deceased Shankar Singh was travelling in the jeep bearing No. RJ-01-C/2065. The said jeep met with an accident near Sojat City due to rash and negligent driving by the driver of the offending vehicle. In this accident, Shankar Singh and some other persons died on the spot. The jeep was owned by the respondent No. 2 and was insured with respondent No. 3, the United India Insurance Company Ltd., Beawar at the time of the accident.

3. It is contended in the claim petition that the deceased Shankar Singh was 38 years of age and was sole owner of a sweat shop in the name of M/s Shivraj Gajanand at Beawar. He was also a partner in HUF firm M/s Kalyan Mal Bhanwar Lal. It was stated that the deceased was having income of Rs. 36,000/- per annum from both these shops. The Motor Accident Claims Tribunal, Beawar after hearing the respective parties, vide its impugned Award dated 16.07.96 awarded a compensation to the tune of Rs. 1,48,000/- in favour of the claimants/

appellants.

4. Being aggrieved and dissatisfied with the impugned Award passed by the Tribunal, the claimants/ appellants have preferred the instant appeal for enhancement of compensation and more particularly challenged the findings given by the Tribunal on issue No. 5 on the ground that while deciding issue No. 5, it was specifically pleaded and proved by the appellants that the deceased had annual income of Rs. 36,000/- at the time of accident and the Tribunal has committed gross error in disbelieving even existence of firm M/s Shivraj Gajanand owned by the deceased. The claimants had filed return of sales tax of firm M/s Shivraj Gajanand and receipts of sales tax for the year 1974-75 and 1975-76 were also filed.

5. It is further submitted that the Tribunal has seriously erred in not considering the income of the deceased from the firm M/s Shivraj Gajanand on the basis of conjectures and surmises. Merely because the claimants failed to produce any documentary evidence in support of their version that the deceased had an annual income of Rs. 25,000/- from the firm M/s Shivraj Gajanand, the Tribunal should not have arrived at a conclusion that the deceased had no income from this firm.

6. Further the Tribunal has committed an error in assessing the annual income of the deceased to the tune of Rs. 11,000/- only which comes less than Rs. 1,000/- per month and passed the impugned Award contrary to the principle laid down by the Hon''ble Supreme Court in the case of Shusassma Thomas reported in AIR 1993 SC 1631, wherein the Hon''ble Supreme Court has held that the income of the deceased should be doubled keeping in view his age and his future prospects of rise in the life.

7. It is further submitted that the Tribunal has wrongly applied the multiplier of 16, whereas multiplier of 25 was to be applied for awarding compensation.

8. Per contra, learned Counsel appearing for the respondent No. 3, the United India Insurance Company Ltd., has submitted that in the post - mortem report the age of the deceased has been shown as 38 years and the income of the appellant has rightly been assessed as Rs. 11,000/- per annum and after deducting Rs. 3,000/- for personal expenses, Rs. 8,000/- has been considered as annual income of the deceased and after using correct multiplier of 16, compensation to the tune of Rs. 1,48,000/- has been awarded in favour of the claimants/appellants and also awarded Rs. 1500/- as cost of litigation.

9. It is also submitted that the claimants have not produced any documet to show that the deceased was earning the amount so pleaded in the claim petition. The carbon copy of the sale tax return of M/s Shivraj Gajanand of the year 1974-75 and 1975-76 do not indicate the income of the deceased and no other document to prove the income was produced by the claimants in support of their claim petition. Therefore, the Tribunal has rightly considered the annual income of the deceased as Rs. 11,000/- and after applying correct multiplier, awarded

compensation to the tune of Rs. 1,48,000/-, which is just and reasonable.

10. I have heard rival submissions of the respective parties and carefully gone through the record of the case as also the impugned Award dated 16.07.1996 passed by the Tribunal. I have also gone through the relevant provisions of law and the judgments referred before this Court.

11. Upon careful perusal of the impugned Award as well as the statements recorded and the document submitted by the claimants, the Tribunal has arrived at a conclusion that the income of the deceased was Rs. 11,000/- per annum, whereas it was pleaded that the income of the deceased was Rs. 25,000/- per annum.

12. So far as the age and income of the deceased is concerned, on the basis of the material available on record, the Tribunal has not rightly arrived at a conclusion and also not correctly applied the multiplier looking to the age of the deceased. In such circumstances, it cannot be said that the compensation awarded in favour of the claimants/appellants to the tune of Rs. 1,48,000/- is just and reasonable. Therefore, as per the ratio decided by the Hon''ble Supreme Court and in the considered view of this Court, the compensation awarded in favour of the claimants/appellants to the tune of Rs. 1,48,000/- vide impugned Award dated 16.07.96 required to be enhanced and the same is enhanced from Rs. 1,48,000/- to lump sum Rs. 2,00,000/-. The respondent Insurance Company is directed to make the payment of the enhanced compensation amount to the claimants/appellants within a period of two months, failing which the Insurance Company will be liable to make the payment of the enhanced amount with interest @ 6% p.a.

13. With these observations, the civil misc. appeal stands disposed of and the impugned Award dated 16.07.96 passed by the Motor Accident Claims Tribunal, Beawar is modified to the extent as indicated herein above. Record be sent back.

