(2016) 02 RAJ CK 0104

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 3063 of 2007.

Smt. Santosh Bairwa and Others APPELLANT

Vs

Aasha and Others RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2016) 3 DNJ 1051 : (2016) 4 TAC 368 : (2016) 1 WLCRajUC 599

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Nitesh Rawat, Advocate, for the Appellant; P.S. Shukla, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Kanwaljit Singh Ahluwalia, J. - Ramdayal on 15.3.2005 on Motorcycle No.RJ14-21M- 7659 was going towards Makarana. A Truck bearing registration No.RJ21-G-1786 came from opposite direction in a rash and negligent manner from wrong side, had collided with the motorcycle of Ramdayal as a result thereof Ramdayal fell on the road and received serious injuries and subsequently, he died. Smt. Santosh Bairwa w/o Late Ramdayal, Mukesh s/o Late Ramdayal, aged 15 years, Kum. Kamlesh d/o Late Ramdayal, aged 13 years, Kum. Pinki d/o Late Ramdayal, aged 11 years, Smt. Rampyari w/o Mangilal, mother of the deceased aged 62 years, and Mangilal s/o Late Laduram, aged 65 years, father of the deceased jointly filed a claim petition seeking compensation under the Motor Vehicles Act. The Tribunal vide impugned judgment dated 15.3.2007 in all has awarded compensation of Rs.3,95,000/- in favour of the claimants-appellants. In the present appeal, prayer for enhancement of amount of compensation has been made.

2. Shri Nitesh Rawat learned counsel for the appellants has relied upon the certificate (Exhibit- 7) to contend that the employer had given a salary certificate and as per the said salary certificate, deceased Ramdayal was drawing salary of

Rs.6000/- per month as a Chief Site Supervisor. It is stated that Bhargava and Associates, employer, is a civil contractor.

3. Shri P.S. Shukla learned counsel for the respondent insurance company has submitted that neither the firm Bhargava and Associates is genuine nor the certificate issued by them (Exhibit-7) can be relied as genuine.

4. The Tribunal had assessed income of the deceased as Rs.3000/- per month. In the present case, not only the salary certificate (Exhibit-7) has been produced, but the appellants have also placed on record Labour Payment Vouchers (Exhibits-15, 16, 17, 18 and 19) on record. Documents were so prepared much before the accident. Therefore, this court is to assess income of the deceased as Rs.6000/- per month. Sanjay Bhargava, owner of Bhargava and Associates, has appeared as AW.3.

5. Be that as it may, this court find that the deceased Ramdayal was gainfully employed. Hence, taking into account the nature of job his income can be assessed as Rs.4000/- per month, i.e. Rs.48,000/- per annum. The court below has not awarded future prospects of deceased. In Rajesh and others v. Rajbir Singh and Others, reported in A.I.R. 2003 S.C. 674, three-judges Bench of the Supreme Court held that in case, deceased was less than forty years of age and was self-employed with fixed wages, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

6. It will be apposite to note here Para 11 of the judgment rendered in the case of Rajesh and Others (supra):-

"Since, the Court in Santosh Devi''s case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma''s case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

7. Deceased Ramdayal was survived by mother, wife and three children. Thus, number of dependents upon the deceased were five. As per Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. [2009 ACJ 1298], in case where dependents on the deceased are five then ?th is to be deducted towards personal living expenses of deceased. The Tribunal also awarded Rs.30,000/- towards loss of affection, love, care and guidance to all the claimants in lump sum which is at lower side. The Tribunal has also awarded Rs.5000/- as funeral expenses. No case is made to vary the multiplier.

8. Hence, this court is of the view that the compensation to be awarded to the

claimants is required to be reassessed as follows:-

SI. No. Heads Calculation

(i) Income Rs.4,000/- per month, i.e. Rs.48,000/- per annum

(ii) Compensation for future prospects @ 50% of income Rs.48,000/- + Rs.24,000/- = Rs.72,000/-

(iii) ?th of (ii) deducted as personal expenses of the deceased Rs.72,000/- - Rs.18,000/- = Rs.54,000/-

(iv) Compensation after multiplier of 15 is applied Rs.54,000/- x 15 = Rs.8,10,000/-

(v) Each child is held entitled to Rs.30,000/- for loss of love, care, affection and guidance Rs.30,000/- x 3 = Rs.90,000/-

(vi) Compensation to wife for loss of consortium Rs.50,000/-

(vii) Compensation for loss of care, affection and services of son to mother Rs,30,000/-

(viii) Funeral expenses Rs.15,000/- Total Compensation awarded (iv+v+vi+vii+viii) Rs.9,95,000/-

9. Thus, the amount awarded by the Tribunal is enhanced to Rs.9,95,000/- in above terms. The said amount will carry interest @ 6% per annum from the date of filing of the petition till realization.

10. It is, hereby, ordered that the enhanced amount shall be kept in the Monthly Income Scheme in the post office initially for a lock-up period of three years and the interest accrued upon the deposit shall be paid to the claimants-appellants proportionately, on monthly basis. The Secretary, District Legal Services Authority, Jaipur in the best interest of the claimants, shall keep the amount in the Monthly Income Scheme with the Indian Post Office and shall open separate accounts in the name of each claimant.

11. However, a further direction is, hereby, issued to the Secretary, District Legal Services Authority, Jaipur to acquaint the claimants regarding the amount, which has accrued to them by way of enhancement and the fact that the amount shall be kept in Monthly Income Scheme in the Indian Post Office for the benefit of the claimants.

12. The above direction regarding deposit in Monthly Income Scheme with Indian Post Office has been issued as it has been brought to the notice of this court, that go-between or relations fritter away with amount awarded as compensation, on the ground that money has been spent towards litigation expenses.

13. With the above modification in the award passed by the Motor Accident Claims Tribunal, Jaipur, present appeal stands disposed of.

