
(2013) 07 RAJ CK 0255

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 163 of 2000

Smt. Shymu Bai and Others

APPELLANT

Vs

Shri Lal Singh and Another

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 4 WLN 1

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Parikshit Nayak, for the Appellant; Vimal Mathur, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 ("the Act") has been filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Banswara ("the Tribunal"). The facts in brief are that one Bagdi Ram was travelling in Bus No. RRY-1011 and when the bus reached near Mahi Bridge, Drilling Truck No. RJB-5019 driven by Lal Singh and belonging to the respondent No. 2-Department being driven rashly and negligently collided with the bus, resulted in injuries to the bus passengers. Bagdi Ram suffered grievous injuries and succumbed to the said injuries during treatment. For the death of Bagdi Ram, the claimants claimed a compensation of Rs. 19,00,000/-. It was claimed that the deceased was aged 27 years and employed with Banswara Syntex Limited and used to do cycle repairing work in extra time and was earning Rs. 2,000/-.

2. The application was opposed by the respondents by filing reply and the averments made in the claim petition were denied.

3. After evidence was led by the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by the driver-

respondent No. 1, which resulted in injuries to Bagdi Ram, to which he succumbed.

4. On the issue of grant of compensation, the Tribunal while disbelieving the statement of wife of the deceased and relying on the statement of his mother assessed his daily income at Rs. 30/- and after deducting 1/3rd towards personal expenses awarded compensation by taking loss of income at Rs. 500/- (after taking the per day income at Rs. 30/- and reducing the same by 1/3rd in place of Rs. 600/- how the figure of Rs. 500/- was arrived at is not known) awarded a compensation of Rs. 96,000/- by adopting multiplier of 16. The Tribunal further awarded Rs. 5000/- towards funeral expenses and Rs. 25,000/- towards loss of love, affection and consortium, in total a sum of Rs. 1,26,000/-.

5. It is submitted by learned counsel for the appellant that an application under Order XLI, Rule 27 CPC was filed on 5.3.1998 alongwith a certificate dated 25.1.1996 issued by the Factory Manager of Banswara Syntex Limited indicating that deceased was working in the Binding Department with Token No. 949 for the period 9.11.1979 to 13.12.1992 and his monthly wages was Rs. 1414.90/-. In the application it is indicated that though the certificate was obtained during the pendency of the claim petition and was handed-over to the counsel appearing for the claimants, however, the same could not be produced before the Tribunal and as such, the same is being produced now.

6. No reply to the said application has been filed. In view of the submissions made, the application filed by the appellants is allowed and the salary certificate issued by Banswara Syntex Limited is taken on record.

7. Learned counsel for the appellants questioning the grant of meager compensation by the Tribunal submitted that while the Tribunal has accepted the statement of mother of the deceased Bagdi Ram that deceased and his family were living separately, however, her statement regarding his daily income and what he was contributing to the family has been accepted, which is ex-facie contrary to the evidence on record. The evidence led by the claimants was categorical that the deceased was serving with Banswara Syntex Limited and was earning about Rs. 2,000/- per month which included his income by way of cycle repairing and there was no contrary evidence available on record to reach any other finding.

8. It was further submitted that the Tribunal was not justified in not awarding the interest from the date of claim petition and awarding the same from 1.6.1997.

9. On the other hand, learned counsel for the respondents submitted that there is no reason to interfere with the award passed by the Tribunal, which is just and proper, inasmuch as, the claimants have failed to lead any evidence in support of their claim regarding the income of the deceased.

10. Criticising the certificate produced by the appellant, it is submitted that the said certificate appears to be an after thought and cannot be relied on by the

claimants for seeking enhancement of compensation.

11. I have considered the rival submissions made by learned counsel for the parties.

12. It was the categorical case of the claimants from the beginning with filing of the claim petition that deceased was serving with Banswara Syntex Limited and was earning Rs. 2,000/- by way of salary and doing the cycle repairing work. Even during the course of statement, the wife of the deceased though illiterate was firm in her statement that the deceased was serving with Syntex Mill and was earning about Rs. 2,000/- per month. The learned Tribunal relying on the statement of Smt. Dhuli Bai, mother of the deceased that he was getting Rs. 30/- per day and used to spend Rs. 15/- on himself has assessed the income of the deceased at Rs. 30/- per day, however, apparently, the Tribunal ignored the categorical statement of mother of the deceased that she was living separately from Bagdi Ram and his family and consequently, she could not have any knowledge about his per day income and as to how much he was contributing to the family. The sole reliance placed on the statement of Smt. Dhuli Bai, mother of the deceased in these circumstances, is wholly misplaced and consequently the finding given by the Tribunal in this regard is set-aside.

13. As already considered, the statement of Smt. Shyamu Bai, wife of the deceased regarding deceased serving with the Syntex Mill is clear and categorical and is now supported by the certificate issued by the said Banswara Syntex Limited.

14. A look at the certificate reveals that the said certificate is quite categorical in terms that it gives out the token number, department and date of period of service i.e. 9.11.1979 to 13.12.1992 and that the monthly wages of the deceased was Rs. 1414.90/-.

15. In that view of the matter, the income of the deceased has to be calculated based on the certificate issued by Banswara Syntex Limited and therefore, the income of the deceased at the time of his death is assessed at Rs. 1400/-.

16. The age of the deceased was claimed at 27 years, which appears to be in contradiction to the salary certificate produced which indicates that he was serving with Banswara Syntex Limited since 1979, therefore, taking the age of the deceased in 1979 age 18 years, the deceased would be about 31 years on the date of his death.

17. Applying the principles laid down by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, and Rajesh and Others Vs. Rajbir Singh and Others, the claimants would be entitled to the compensation towards loss of income as follows: 1400 (monthly income)-1/3rd (Rs. 460/-)=940+40% (Rs. 376/- future prospects)=1316 x 12 x 16=2,52,672/-. The award of Rs. 30,000/- on other heads is upheld. The

claimants would also be entitled for interest @ 6% p.a. on the enhanced amount of compensation i.e. Rs. 1,56,672/- from 1.6.1997.

18. The Tribunal has given cogent reasons for awarding interest from 1.6.1997 and has noticed that the appellants have inordinately delayed leading of evidence and despite filing claim in the year 1993, the evidence was closed on 25.9.1997. There is no reason to interfere with the said direction. The said direction to award interest from 1.6.1997 is justified in the facts and circumstances of the case.

19. In the result, the appeal is partly allowed. The award passed by the Tribunal is modified to the extent indicated herein-in-before.

20. The amount of enhanced compensation be paid by the respondents within a period of three months. No costs.