

(2017) 06 RAJ CK 0065
In the Rajasthan High Court
Case No : 108 of 2008

Smt. Sona Devi W/o Shri Bal Ram, & Anr.	APPELLANT
Vs	
Jag Raj Singh S/o Shri Bakhtawar Singh, & Ors.	RESPONDENT

Date of Decision : 06-06-2017

Acts Referred:

Indian Penal Code, 1860, Section 279,
Section 304A - Rash driving or riding on a public way -
Causing death by negligence
Motor Vehicles Act, 1988, Se

Citation : (2017) 06 RAJ CK 0065

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : G.R. Goyal, L.D. Khatri

Judgement

1. Appellant-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking enhancement in compensation quantified and awarded by Motor Accident Claims Tribunal, Sri Ganganagar (for short, "learned Tribunal") by its judgment and award dated 3rd of October, 2007. Learned Tribunal, by the award impugned, has determined total amount of compensation to the tune of Rs.2,66,000/- under different heads but awarded its 50%, i.e., Rs.1,33,000/- with a definite finding that deceased-Rakesh Kumar was contributorily negligent for the cause of accident.

2. The facts, apposite for the purpose of this appeal, are that on 5th of August, 2004 at about 08:30 A.M. when deceased- Rakesh Kumar was riding his motorcycle bearing No.RJ13-7M- 1115 from Narsinghpura to Sri Ganganagar, his motorcycle collided with a truck bearing No.HR-58-0671 at M.L. Gurudwara and as a result of accident suffered grave and serious injuries which led to death on the spot. The incident was reported to concerned police station, and thereupon, a case under Section 279 & 304A IPC was registered against the driver of aforesaid truck. The appellant-claimants, as parents of deceased-Rakesh Kumar, laid a claim for compensation under Section 166 of the Act quantifying compensation to

the tune of Rs.32,08,000/- under different heads. In the claim petition, besides owner and driver of the offending vehicle, insurer was also impleaded as nonapplicant. For claiming compensation, it is, inter-alia, averred by the appellants that deceased-Rakesh Kumar was a bachelor of 19 years of age at the time of his death and prosecuting his studies besides carrying out agricultural activities. In terms of prevailing minimum wages, at the relevant point of time, his annual income was shown as Rs.25,000/-. Attributing rash and negligent driving to the driver of truck, appellant-claimants claimed compensation from driver & owner of the vehicle as well as the insurer.

3. The claim petition is contested by respondents. On behalf of respondent No.1 & 2, a joint reply to the claim petition is submitted refuting all the averments. The third respondent-insurer also submitted its reply to the claim petition. In the reply insurer specifically averred that accident did not occur due to rash and negligent driving of the truck. A specific objection is incorporated in the reply that at the time of accident, driver of the truck was not having a valid driving licence, and therefore, the insured has violated the terms of insurance policy, as such, liability to pay compensation cannot be fasten on the insurer.

4. Learned Tribunal, on the basis of pleadings of rival parties, settled following issues for determination. "VERNACULAR MATTER OMITTED"

5. In support of claim, appellants tendered documentary as well as oral evidence and two witnesses are examined on their behalf. In counter to the evidence of appellants, respondent No.1-Jog Raj Singh himself appeared in the witness box and one more witness is also examined. On behalf of respondent insurance company NAW3 Y.K. Kaushik appeared in the witness box. Learned Tribunal, after conclusion of arguments of rival parties, proceeded to decide issue No.1 & 4 conjointly. While deciding issue No.1 & 4, learned Tribunal analyzed the evidence and materials available on record and recorded its finding that deceased was also contributorily negligent for the cause of accident. In its conclusion, the learned Tribunal apportioned 50% contributory negligence on the part of deceased-Rakesh Kumar. While considering objection of the respondent-insurer, learned Tribunal overruled the same by deciding issue No.3 against it. Then, switching on to issue No.2, for determining quantum of compensation, the learned Tribunal presumed annual income of the deceased to the tune of Rs.25,000/- and by applying multiplier of 15 worked out total amount to the tune of Rs.3,75,000/-. After deducting 1/3rd amount for personal expenses, final amount to the tune of Rs.2,50,000/- is determined for loss of dependency. Apart from loss of dependency, learned Tribunal also awarded Rs.10,000/- for mental agony, loss of love and affection as well as companionship @ Rs.10,000/- with Funeral expenses of Rs.4,000/- and other expenses. The total amount of compensation thus came to Rs.2,66,000/-, as determined by learned Tribunal, and after making deduction of 50% for contributory negligence of deceased-Rakesh Kumar, learned Tribunal awarded Rs.1,33,000/-.

6. Mr. G.R. Goyal, learned counsel for the appellant-claimants has strenuously

urged that learned Tribunal has grossly erred in deciding issue No.1 & 4 partly against appellants while recording the finding that deceased was contributorily negligent for the cause of accident. Learned counsel would contend that the amount of compensation determined by learned Tribunal is grossly inadequate in the backdrop of calamity which has engulfed life of a young boy of 19 years. Assailing the impugned award for determining compensation under different heads, Mr. Goyal submits that the learned Tribunal has erroneously applied multiplier of 15 whereas it ought to have applied multiplier of 16 looking to the age of deceased. Learned counsel further submits that the compensation awarded by the learned Tribunal for mental agony, loss of companionship and for love & affection is grossly inadequate, which is liable to be enhanced in the peculiar facts and circumstances of the case.

7. E converso, Mr. L.D. Khatri, learned counsel appearing for insurer, submits that learned Tribunal, while recording its finding on issue No.1 & 4, has meticulously analyzed the entire evidence available on record, which is not liable to be interfered with. Mr. Khatri submits that the evidence, which was available on record, has been rightly construed by learned Tribunal for recording its finding that deceased equally contributed for the mishap, and therefore, the said finding cannot be interfered with in exercise of appellate jurisdiction. Joining issue with the appellants on quantum of compensation, Mr. Khatri submits that in totality of circumstances, learned Tribunal has rightly applied the multiplier and quantified the amount of compensation, which merits no interference.

8. I have heard learned counsel for the appellant-claimants as well as learned counsel for the insurance company, perused impugned judgment & award and thoroughly scanned the record of the case.

9. Appellants have essentially questioned the impugned award on two counts: viz., finding and conclusion of learned Tribunal on issue No.1 & 4 as well as on issue No.2.

10. At the threshold, I would like to examine the finding of learned Tribunal on issue No.1 & 4.

11. In order to examine finding on issue No.1 & 4, it would be just and appropriate to appreciate the evidence tendered by rival parties. The appellant No.2 herself has appeared in the witness box to prove the case but admittedly she was not an ocular witness, therefore, her testimony to the extent of finding on issue No.1 & 4 is not of much significance. The other witness, Mohanlal, too is not an eye-witness inasmuch as in his deposition he has very candidly admitted that he reached at the spot after the accident and he was at a distance of about two bighas when the accident occurred. As against the evidence of appellants, evidence of Jog Raj Singh NAW1, the driver of offending vehicle, and Tej Singh NAW2, alleged eye witness is of more sterling worth and cannot be ignored. Therefore, in that background, learned Tribunal, in my considered opinion, has not committed any error in appreciation of evidence while recording finding on

issue No.1 & 4 partially against the appellants.

12. Now, switching on to issue No.2, I feel persuaded to examine the amount of compensation meticulously in the wake of facts and circumstances of instant case. Learned Tribunal, while determining the compensation, has though resorted to Second Schedule which prescribes structured formula for determination of compensation under Section 163A of the Act, but then, it has not cared to apply multiplier which is prescribed in the schedule. Indisputably, at the time of accident, resulting in death of Rakesh Kumar he was 19 years old, and therefore as per Second Schedule the learned Tribunal ought to have pressed into service multiplier of 16 instead of 15. Thus, applying multiplier of 16 the amount worked out would obviously result in enhancement of the claim amount by Rs.2,66,667/- and after deducting 50% for contributory negligence it comes to Rs.1,33,333.50, which I feel persuaded to grant to the appellants.

13. The learned Tribunal, while deciding issue No.2, has eschewed one relevant aspect for determining compensation inasmuch as it has not awarded any compensation under the head Future Prospects of the deceased. While, it is true that there was no definite income of the deceased as he was not in permanent employment but the fact of the matter is that he was prosecuting his studies and was also engaged in agricultural activities, therefore, applying the ratio laid down in *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.* [2009 (6) SCC 121], I feel persuaded to grant 30% amount for future prospects which comes out to Rs.80,000/- and declare the claimants entitled for the same without any deduction. Although issue No.1 is partly decided against the appellants so as to castigate deceased Rakesh Kumar for contributory negligence apportioned upto 50% but upholding said finding of the learned Tribunal itself cannot be construed a plausible ground for slashing the compensation under the head future prospects of the deceased. The beneficent object manifested in the provisions of the Act regarding accident claims cannot be construed narrowly by taking a hyper-technical view while determining just compensation. Legislature in its wisdom has used phrase "just compensation" under Section 168 of the Act which denotes equitability, fairness and reasonableness having large peripheral field.

14. Supreme Court in *Sarla Verma (supra)* has dilated on just compensation and held:

"Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to

awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation."

15. Adverting to the compensation awarded by learned Tribunal for mental agony, loss of companionship and for love & affection, suffice it to observe that death of a son for parents is an irreparable loss which cannot be compensated in terms of money. The accident has engulfed life of a 19 years boy, who was not only prosecuting his studies but was also carrying out agricultural activities and that has given a serious jolt to his parents who as a consequence of the accident are deprived of companionship of their son during the evening phase of their life. Had their son survived, he could have served them during their old age, and therefore, in that background, the amount of compensation for loss of companionship and also for love & affection quantified and awarded by learned Tribunal is per se inadequate and not commensurating with the calamity, which has occasioned in the family of appellants. I am aghast that learned Tribunal has reduced the amount of compensation determined for mental agony, loss of companionship and also for love & affection besides funeral expenses solely on the basis of finding that deceased was contributorily negligent for the cause of accident. This sort of finding of the learned Tribunal is wholly perverse, and therefore, reduction in the amount of compensation under these heads to the extent of 50% merits annulment. Taking into account this fact scenario, I feel persuaded to enhance the amount of compensation under this head to the tune of Rs.75,000/- so as to declare appellants entitled for compensation of Rs.75,000/- ,i.e., an additional amount of Rs.65,000/-. The Funeral Expenses awarded by learned Tribunal to the tune of Rs.2,000/- are also grossly inadequate, and therefore, same is enhanced to the tune of Rs.10,000/-. Litigation expenses are maintained subject to overturning the award reducing it to 50%.

16. In view of foregoing discussion, the instant appeal is allowed in part and the amount of compensation awarded to the appellantclaimants is re-determined and assessed as under:

S.No	Head	Amount determined by Tribunal (Rs.)	Amount awarded (Rs.)	Reassessed Amount (Rs.)
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1	Loss of Dependency	2,50,000/-	1,25,000/-	1,33,333.50
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2	Future Prospects	- - 80,000/-	80,000/-	
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3	Mental agony/suffering, loss of companionship and love & affection and sufferings	10,000/-	5,000/-	75,000/-
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4	Funeral expenses	4,000/-	2,000/-	10,000/-
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5	Litigation Expenses	2,000/-	1,000/-	2,000/-
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Total 2,66,000/- 1,33,000/- 3,00,333.50 1,67,333.50

17. Appellant-claimants are, accordingly, declared entitled for the enhanced additional amount of Rs.1,67,333.50/-. The enhanced amount shall carry interest @7.5% per annum from the date of institution of this appeal. The respondents are directed to pay the enhanced amount of compensation along with interest within a period of four weeks from the date of receipt of certified copy of the judgment.

18. Costs are made easy.