(2005) 08 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 912 of 1996

Sujata (Mst.) and Others APPELLANT

Vs

Sai Petro Carriers and Others RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 166

Citation : (2005) 4 ACC 822 : (2007) ACJ 695 : (2005) 4 RLW 2853 : (2005) 4 WLC 488

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : H.M. Bhargava, for the Appellant; Ganesh Joshi, for S.R. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J.—These two appeals have been filed against the judgment/award dated 11.10.1995 passed by the Motor Accident Claims Tribunal, Jaipur District, Jaipur in MACT Cases Nos. 1741/92 & 1742/92 for enhancement of amount of compensation awarded by the tribunal. The MACT Case No. 1741/92 was filed in respect of death of late Shri Ajeet Vyas whereas MACT Case No. 1742/92 was filed in respect of injury sustained by claimant-Mst. Sujata wife of late Shri Ajeet Vyas. The tribunal awarded total compensation of Rs. 7,35,000/- in respect of death of Ajeet Vyas whereas Rs. 51,200/- was awarded for the injuries sustained by Mst. Sujata.

2. Counsel for the appellants Mr. H.M. Bhargava contended that as per finding of the tribunal itself, the age of deceased was 28 years. The tribunal has recorded a finding about income of the deceased as of Rs. 6,000/- per month and after considering his future prospects, a sum of Rs. 9,000/- was determined as monthly income of the deceased for the purpose of calculating the amount of compensation. Out of it, 1/3rd amount was deducted on account of personal expenses of deceased and the dependency was treated as Rs. 6,000/- per

month. His contention is that the tribunal calculated the amount of compensation by applying multiplier of 10 only, whereas as per second schedule appended to Motor Vehicles Act, 1988, the multiplier of 18 ought to have been applied by the tribunal. The counsel for appellant has not challenged the finding of tribunal in respect of income and age of the deceased and his contention is only in respect of proper application of multiplier as per second schedule.

3. In respect of another appeal relating to injuries sustained by Mst. Sujata, his contention is that she remained in coma for about 27 days in SMS Hospital, Jaipur, thereafter, she further remained for about 13 days in Delhi Army Hospital. The documentary evidence in this regard has been placed on record. She was Income Tax payer but tribunal awarded total compensation under all heads as Rs. 51,200/- which is meagre amount, therefore, it should be adequately increased.

4. Counsel for the respondent-insurance company submits that looking to the age and income of the deceased, the amount of compensation awarded by the tribunal is just and reasonable. He submits that the tribunal has already increased the income of the deceased from Rs. 6,000/- to Rs. 9,000/- after considering his future prospects, therefore, multiplier of 10 applied by the tribunal is proper. He further submits that so far as injury sustained by Mst. Sujata is concerned, the tribunal has awarded Rs. 25,000/- for loss of income and Rs. 25,000/- for mental agony and Rs. 1200/- for medical bills, therefore amount of award is just and reasonable.

5. I have considered the rival submissions and examined the impugned judgment dated 11.10.95 and also the record of the tribunal.

6. The tribunal while deciding issue No. 3 has recorded a finding that age of the deceased was 28 years at the time of accident. So far as income of the deceased is concerned, the tribunal considered that deceased had passed BA (Hons) and MBA from United States. He got education from famous Elphiston College and after doing his MBA from the University of U.S.A. he worked as Branch Manager of Citi Bank in Washington. The tribunal has also considered the statements of AW-1 Rakesh Nathani, AW-4 Mst. Sujata and AW-5 HN Hoon who had stated that the deceased was working as executive in the bank before returning to India. He was drawing salary of 30,000 dollar per year in addition to other allowances. After considering oral and documentary evidence, the learned tribunal determined the monthly income of the deceased as Rs. 6,000/- per month and after considering future prospects determined his monthly income as Rs. 9000/-. 1/3rd amount was deducted for his personal expenses. The amount of compensation was calculated at the rate of Rs. 6000/- per month. The multiplier of 10 was applied. Although, the second schedule corresponding to Section 163A of the Motor Vehicles Act, 1988 is not applicable in each and every case relating to compensation u/s 166 of the Motor Vehicles Act but in some cases, Hon''ble Supreme Court has taken a view that it is safe to apply multiplier mentioned in the second schedule corresponding to Section 163(A) in the cases relating to

compensation u/s 166 also. The age of the deceased was admittedly 28 years at the time of accident. As per second schedule, the multiplier of 18 has been mentioned in respect of victim above 25 years of age but not exceeding to 30 years. Therefore, the multiplier of 10 as applied by the tribunal cannot be said to be adequate in any manner, therefore, the proper multiplier which should have been applied in this case was 18 and the same is applied and the total compensation is calculated as Rs. 6,000 x 12 x 18 = 12,96,000/-. The tribunal awarded Rs. 15,000/- for loss of consortium which remains unchanged. Therefore, the total amount of compensation comes to Rs. 13,11,000/- (12,96,000 + 15,000). A sum of Rs. 7,35,000/- has already been paid to the claimants, therefore, respondent-company will now make payment of remaining amount.

7. So far as injury sustained by Mst. Sujata is concerned, it is clear that she remained in coma for about 27 days in SMS Hospital, Jaipur, thereafter she remained admitted in Delhi Army Hospital for about 13 days, she was income tax payer, therefore, under all heads including loss of income, it is just and proper to enhance the amount of compensation from Rs. 51,200/- to lump sum amount of Rs. 1,00,000/-.

8. Consequently, both the appeals are allowed. The judgment/award passed by the learned tribunal dated 11.10.95 is modified. In CMA No. 912/96 the amount of compensation is enhanced from Rs. 7,35,000/- to Rs. 13,11,000/- and in CMA No. 712/96, the amount of compensation is enhanced from Rs. 51,200/- to Rs. 1,00,000/-. The amount awarded by tribunal has already been paid to claimants, therefore, the respondent-company is directed to deposit the balance/enhanced amount in the tribunal. This amount shall carry interest @ 6% per annum from the date of filing of claim application i.e., 14.9.92 till the date of deposit in the tribunal. Counsel for respondent company wants time to deposit the same. Two months'' time is allowed to deposit the enhanced amount along with interest as mentioned above. In CMA No. 912/96, the tribunal is directed to deposit 75% of enhanced amount in the name of Mst Sujata (upto Rs. 3,00,000/- in M.I.S. and remaining in FDR in Post Office) and remaining 25% in the name of Mst. Laxmi Devi Vyas and Dr. Vijay Shanker Vyas in the Monthly Income Scheme of post office, for a period of six years. In CMA No. 712/96, the entire amount shall be deposited in the name of Mst Sujata in MIS of post office for a period of six years. The claimants are allowed to withdraw interest on the said amount on quarterly/monthly basis on the said FDR/MIS and full amount on its maturity. No order as to costs.