**(2016) 09 RAJ CK 0025**

**In the Rajasthan High Court**

**Case No :** Civil Misc. Appeal No. 796 of 2004

Sumitra Devi APPELLANT

Vs

Mushtaq Khan RESPONDENT

**Date of Decision :** 17-09-2016

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

**Citation :** (2016) 4 DNJ 1566

**Hon'ble Judges :** Mr. Arun Bhansali, J.

**Bench :** Single Bench

**Advocate :** Mr. B.N. Sharma, Advocate, for the Appellant; Mr. D.K. Bhootra, Ms. Manisha Purohit and Mr. M.S. Purohit, Advocates, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Mr. Arun Bhansali, J.—These appeals are directed against judgment and awards dated 21.11.2003 passed by Motor Accident Claims Tribunal, Deedwana (''the Tribunal''), whereby the Tribunal for death of Bhanwarlal and Om Prakash has awarded compensation to the tune of Rs. 2,89,000/- each along with interest @ 9% per annum from the date of applications i.e. 23.10.1999.

2. The applications for compensation were filed by the claimants, inter alia, with the averments that on 30.05.1999, Om Prakash and Bhanwarlal were travelling in Jeep No. RJ-21-C-0337 when the offending vehicle (Tractor) being driven by Mushtaq Khan rashly and negligently collided with the said Jeep, resulting in grievous injuries to both the occupants, to which they succumbed. It was, inter alia, claimed that both the deceased were aged 25 years. While Bhanwarlal was earning Rs. 4,000/- per month from doing business, Om Prakash was working as a driver and was also earning Rs. 4,000/- per month. Based on the said averments, compensation to the tune of Rs. 14,26,000/- and 14,86,000/- respectively was claimed.

3. The applications were resisted by the respondents.

4. The Tribunal after hearing the parties, came to the conclusion that there was no material in support of the claim of income of Rs. 4,000/- and assessed the income of both the deceased at Rs. 2,000/- each and after deducting ?rd towards personal expenses and applying multiplier of 17 awarded a sum of Rs. 2,72,000/- towards loss of income, Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium and Rs. 10,000/- towards loss of love & affection and in all a sum of Rs. 2,89,000/- was awarded to both the set of claimants.

5. It is submitted by learned counsel for the appellants that the Tribunal committed error in assessing the income of both the deceased at Rs. 2,000/- per month only. It was submitted that the respondents failed to produce any evidence to contradict the case set up by the claimants and, therefore, there was no reason for the Tribunal to assess the income at Rs. 2,000/- only. It was further submitted that the Tribunal committed error in applying multiplier of 17 despite determining the age of both the deceased at 25 years, which is contrary to the law laid down by Hon''ble Supreme Court in case of Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121.

6. Further submissions were made that the Tribunal was not justified in awarding meagre compensation towards the funeral expenses as well as the loss of consortium and love & affection and, therefore, the award deserves to be modified and enhanced adequately.

7. Learned counsel for the respondents supported the award impugned. It was submitted that the appellants have failed to lead any cogent evidence in support of their claim of income of Rs. 4,000/- per month and, therefore, the Tribunal was justified in assessing the income of both the deceased at Rs. 2,000/- each. It was further submitted that the amount awarded is just and proper and does not call for any interference.

8. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. In application for compensation, the claimants specifically came out with the case that the deceased Bhanwarlal was engaged in business and Om Prakash was working as driver and both of them were earning Rs. 4,000/- each per month. The two witnesses i.e. The wives of claimants appeared in the witness-box and reiterated the averments made in the applications. In cross-examination, only a limited aspect was put to them that they have claimed excessive compensation, to which, the witnesses denied. Besides putting up the said question, no other cross-examination pertaining to the income of the deceased was made.

10. In the overall circumstances of the case specially looking to the fact that both the deceased persons were maintaining a family of 4-5 persons respectively, the assessment of income by the Tribunal to the tune of Rs. 2,000/- per month only is on the lower side and in the circumstances of the case, the same deserves to

 

be enhanced to Rs. 3,000/- per month.

11. Further in view of the law laid down by Hon''ble Supreme Court in the case of Sarla Verma (supra) for both the deceased aged 25 years, a multiplier of 18 deserves to be applied.

12. So far as the deduction is concerned, in both the cases the dependent-claimants are 3 and 4 respectively as the father of the deceased cannot be termed as dependent on the deceased and, therefore, the deduction in the case of Smt. Sumitra Devi at ?rd and in the case of Smt. Buli Devi at ?th would be appropriate.

13. So far as the award of compensation towards funeral expenses is concerned, the same at Rs. 2,000/- even at the relevant time is on the lower side, which is enhanced to Rs. 5,000/- in each case.

14. So far as the award of compensation toward loss of consortium is concerned, looking to the age of both the deceased, the award of Rs. 5,000/- is too low and the same is, therefore, enhanced to Rs. 20,000/- in each case. The lump-sum amount for loss of love & affection at Rs. 10,000/- is also not appropriate and the claimants other than the wives are entitled to compensation of Rs. 5,000/- each.

15. Assessing the compensation based on the above discussion, the same would be as under in the case of Smt. Sumitra Devi:-

Sr. No.

Particulars

Amount (Rs.)

1.

Loss of Income (2000X12X18)

Rs. 4,32,000/-

2.

Funeral Expenses

Rs. 5,000/-

3.

Loss of Consortium

Rs. 20,000/-

4.

Loss of Love & Affection to son, father and mother of the deceased.

 

Rs. 15,000/-

Total Rs. 4,72,000/-

Assessing the compensation based on the above discussion, the same would be as under in the case of Smt. Buli Devi:-

Sr. No.

Particulars

Amount (Rs.)

1.

Loss of Income (2250X12X18)

4,86,000/-

2.

Funeral Expenses

Rs. 5,000/-

3.

Loss of Consortium

Rs. 20,000/-

4.

Loss of Love & Affection to children, father and mother of the deceased.

Rs. 20,000/-

Total Rs. 5,31,000/-

The claimants would also be entitled to interest on the enhanced amount of compensation @ 7% per annum from the date of application i.e. 03.11.1999 to the date of actual payment.

16. It is made clear that the rate of interest awarded by the Tribunal on the sum awarded by it has not been disturbed.

17. In view of the above discussion, the appeals are partly allowed. While the appellants Smt. Sumitra & Ors. would be entitled to further compensation to the tune of Rs. 1,83,000/- along with interest @ 7% per annum from the date of application i.e. 03.11.1999 to the date of actual payment, the appellants Smt. Buil Devi & Ors. would be entitled to further compensation to the tune of Rs. 2,42,000/- along with interest @ 7% per annum from the date of application 03.11.1999 to the date of actual payment.

18. The aforesaid enhanced amount with interest would be paid 75% to the wife

 

of the deceased and the rest of the amount would be equally divided among the rest of the claimants in their saving bank account.

19. The respondent-Insurance Company is directed to make payment of the compensation within a period of six weeks from the date of this judgment.