

(2017) 02 RAJ CK 0107
In the Rajasthan High Court
Case No : 227 of 2017

The New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Leela & ors.

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 171,
Section 171 - Award of interest where any claim is allowed

Citation : (2017) 02 RAJ CK 0107

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Rajesh Choudhary, S.K.Poonia

Judgement

1. This appeal is directed against the judgment & award dated 10/11/2016 passed by the Motor Accident Claims Tribunal, Bikaner ("the Tribunal"), whereby, the Tribunal has awarded a sum of Rs.31,92,760/- as compensation along with interest @ 7% p.a. from the date of application i.e.26/6/2014 to the claimants.

2. The application for compensation was filed by wife, minor

son and parents of one Mahendra Kumar with the averments that on 3/9/2013 at about 10.00 am Mahendra Kumar was driving his Motor Cycle when the offending vehicle, being driven rashly & negligently by Babulal collided with the said Mahendra Kumar, resulting in grievous injuries, to which he succumbed in the hospital on 5/9/2013.

3. It was inter alia indicated that the deceased was aged 30 years, was working as Hostel Superintendent with the Social Justice and Empowerment Department of the Government and based on the said submissions compensation was sought.

4. Reply to the application was filed by the respondents inter alia indicating that the accident occurred on account of negligence of the deceased himself, the driver was in possession of a valid driving licence and, therefore, the application for compensation be dismissed.

5. The Insurance Company filed its reply and alleged that the accident occurred on account of rash and negligent driving by the deceased himself, the driver of the offending vehicle was not in possession of valid driving licence, there was no permit and fitness certificate and on account of violation of policy conditions the Insurance Company was not liable to make payment of the amount of compensation.

6. Based on the averments of the parties, the Tribunal framed four issues, after evidence was led by the claimants and no evidence was produced by the respondents, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of the offending vehicle, the objections raised by the Insurance Company regarding its liability were rejected, whereafter, the amount of compensation was assessed by the Tribunal and it was found that the age of the deceased was 30 years, his salary was Rs.14,940/- p.m. Based on the said facts, the Tribunal added 50% towards future prospects and after deducting 1/3rd towards personal expenses assessed the compensation after applying the multiplier of 17, at Rs.30,47,760/- towards loss of income and further awarded a sum of Rs.50,000/- towards loss of consortium and Rs.25,000/- each to the other claimants towards loss of love and affection, Rs.20,000/- towards funeral expenses and transportation, in total a sum of Rs.31,92,760/- along with interest @ 7% p.a., as noticed hereinbefore, was awarded.

7. It is submitted by the learned counsel for the appellants that a bare perusal of the site map (Ex.4) prepared by the police during investigation proves that the accident occurred on account of sole negligence of the deceased and in any case he had contributed towards the accident as the accident apparently happened on the middle of the road. Regarding the quantum of compensation, it was submitted that the wife of the deceased was working as lecturer and was earning Rs.35,000/- per month as gross salary since 2011 and was not financially dependent on the deceased and, therefore, the assessment of compensation by the Tribunal was not fair. It was also submitted that the minor son is also dependent on his mother and the father of the deceased was a retired Govt. employee and is drawing pension and, therefore, cannot be termed as dependent and, therefore, the Tribunal was

not justified in awarding the huge compensation.

8. Further submissions were made that the age of the deceased was more than 30 years and, therefore, multiplier of 16 instead of 17 should have been adopted. A plea was also raised that as 50% of the amount of compensation has been awarded under the head future prospects, the Tribunal was not justified in awarding interest on the said amount. It was prayed that the award be set aside and/or modified.

9. Learned counsel appearing on caveat for the respondent claimants vehemently submitted that there is no substance in the appeal filed by the appellant

inasmuch as no evidence was led by it in support of any of the contentions now sought to be raised.

10. It was submitted that the claimants have led evidence to prove all the issues and, therefore, the same does not call for any interference.

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

12. So far as the issue of contributory negligence of the deceased is concerned, the appellant has placed sole reliance on the site map (Ex.4). However, the respondent claimants had produced eye witness Roopa Ram (A/W-2), who was extensively cross examined by the counsel for the Insurance Company. During the course of cross examination the emphasis was to discredit the said witness and not to extract the facts as to what transpired at the time of accident. The said witness categorically stated that the accident occurred on account of rash and negligent driving by the driver of the offending vehicle, who came and struck the deceased on the wrong side of the road. The site map prepared by the police can be used in support of oral evidence and the same by itself cannot be used to discredit the ocular evidence led by the parties, in view thereof, the Tribunal did not commit any error in coming to the conclusion that the accident occurred on account of rash and negligent driving of the offending vehicle and not the deceased.

13. So far as the quantum of compensation is concerned, the mere fact that the wife of the deceased was also earning, cannot be a reason to deny the compensation to the family inasmuch as the deceased was living with the family and even if the wife was earning, it cannot be said that the deceased was not contributing towards the family expenses and, therefore, the claimants would not be entitled to award of compensation. The Tribunal has deducted 1/3rd towards personal expenses and even if the father of the deceased is not included as a dependent on account of the fact that he himself is a pensioner, as the dependents are three, on that count in view of the judgment of Supreme Court in the case of Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121, deduction of 1/3rd towards personal expenses is justified, the multiplier adopted by the Tribunal, in view of the fact that the deceased was aged 30 years and had not completed 31 years, at 17 is also in accordance with the judgment Hon"ble Supreme Court in the case of Sarla Verma (supra).

14. The argument raised by the learned counsel for the appellant that the Tribunal has wrongly awarded interest on the amount of future prospects is also without any basis as awarding of interest is governed by the provisions of Section 171 of the Motor Vehicles Act, 1988 ("the Act"), which provides for award of interest on compensation. The award of amount under the head "future prospects" is part and parcel of the compensation and is not independent of the amount of compensation so as to take it out of the purview of the provisions of Section 171 of the Act. In view thereof, the submissions made in this regard also

cannot be countenanced.

15. In view of the above discussion and the fact that the deceased was in settled Govt. service and died at the age of 30 years, the award of compensation cannot be said to be excessive so as to require any interference in this appeal.

16. Consequently, there is no substance in the appeal and the same is hereby dismissed.