(2016) 10 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 2101 of 2016

The New India Insurance Co. Ltd. — APPELLANT

Vs

Smt. Kalpana — RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 1 WLN 289

Hon'ble Judges : Mr. Arun Bhansali J.

Bench : Single Bench

Advocate : Mr. Anil Bachhawat, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Arun Bhansali J. - This appeal is directed against judgment and award dated 04.06.2016 passed by the Motor Accident Claims Tribunal, Salumber (''the Tribunal''), whereby the Tribunal has awarded a sum of Rs.30,14,000/- as compensation to the claimants.

2. The application for compensation was filed by the claimants, inter alia, with the averments that Ramesh Chandra ? son/husband/father of the claimants was going on motorcycle when the offending vehicle ? Bolero No. RJ-27-UA-5371 (''the Bolero'') struck the motorcycle from behind, resulting in Ramesh Chandra receiving grievous injuries and ultimately succumbed to the same.

3. It was claimed that the deceased was aged 52 years and was working as conductor with the Rajasthan Road Transport Corporation (''RSRTC'') and based on the said averments compensation to the tune of Rs.85,54,420 was claimed.

4. The Tribunal, after evidence were led by the parties, came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of the Bolero. The age of the deceased was accepted at 52 years and income was assessed after providing for deductions based on the salary slip at Rs.2,06,059/- per annum. After applying a multiplier of 11, the compensation was awarded.

5. It is submitted by learned counsel for the appellant that the Tribunal committed error in awarding huge compensation to the claimants; the wife of the deceased-Smt. Kalpana was provided compassionate appointment and she was getting salary of Rs.5,000/- from the said employment and, therefore, the said amount should have been deducted from the amount pertaining to the loss of income.

6. Reliance was placed on the judgment of Hon''ble Supreme Court in the case of Bhakra Beas Management Board v. Kanta Aggarwal & Ors., 2008 ACJ 2372.

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

8. The plea raised by the appellant regarding deduction of the amount of salary being received by the claimant-Smt. Kalpana, based on the compassionate appointment provided to her has no basis. Hon''ble Supreme Court in the case of Vimal Kanwar v. Kishore Dan, (2013) 7 SCC 476 has categorically held that the said amount cannot be deducted.

9. So far as the submissions made by learned counsel for the appellant regarding conflicting judgment of Hon''ble Supreme Court in the case of Bhakra Beas (supra) and Vimal Kanwar (supra) is concerned, in a recent judgment of Hon''ble Supreme Court in the case of Reliance General Insurance Co. Ltd. v. Shashi Sharma & Ors., Civil Appeal No. 9654/2016 decided on 23.09.2016 on reference, the Hon''ble Supreme Court held that the principles laid down in the case of Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation & Anr.: (1999) 1 SCC 90 would prevail and that the judgment in the case of Bhakra Beas (supra) essentially pertained to a case under Fatal Accident Act and the judgement was in the nature of directions under Article 142 of the Constitution of India.

10. In view of the pronouncement of Hon''ble Supreme Court in the case of Shashi Sharma & Ors. (supra), the submission sought to be made by learned counsel for the appellant regarding conflicting judgments in the case of Bhakra Beas (supra) and Vimal Kanwar (supra) also has no substance.

11. No other submission was made. In view of the above discussion, as there is no substance in the present appeal, the same is therefore, dismissed.