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(2014) 07 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 610/2002

The Oriental Insurance Company Ltd. APPELLANT

Vs

Soma Devi RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 07 RAJ CK 0099

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jainendra Kumar Ranka, J.—Instant appeal u/s. 173 of the Motor Vehicle Act, 1988 has been filed by the non-claimant-appellant (the Oriental Insurance Company Ltd.) assailing the award dt. 16/01/2002 passed by the Motor Accident Claims Tribunal, Gangapur City in claim case No. 88/1998 by which, while partly allowing the claim petition filed by the claimants-respondents, compensation to the tune of Rs. 5,27,000/- has been awarded to the claimants-respondents.

2. None appears for the parties.

3. The facts, which have been gathered on perusal of the impugned award passed by the Tribunal, it reveals that on 09/07/1998, when the deceased Bhuri Singh was going from Bharatpur to Hindaun in Truck No. R.J.05/1275 and reached near Sathi Mod at about 9.30 pm, then a bus bearing No. RJ 25/326, which was being driven by its driver in a rash and negligent manner, dashed with the truck resulting in sustaining injuries to the deceased Bhuri Singh and later on he died in hospital.

4. The claimants-appellants submitted a claim petition before the Tribunal claiming compensation to the tune of Rs. 38,06,000/-. It was alleged in the claim petition that the deceased was a truck driver and was earning Rs. 6,000/- per month by driving truck being in employment with the respondent No. 4 and at

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the time of death he was aged about 37 years.

5. The respondents No. 1 & 2 i.e. owner and driver of the offending vehicle submitted their reply before the Tribunal denying the averments made in the claim petition and it was alleged that the accident occurred due to negligence of the deceased, however, it was admitted that the offending vehicle was duly insured and, as such, if there is any liability, the Insurance Company was liable to pay the same.

6. As regards respondents No. 3-Insurance Company, it filed its reply denying the averments made in the claim petition and it was contended that since the driver of the offending vehicle was not having valid driving licence, there was breach of the conditions of the insurance policy. It was further contended that the deceased himself was negligent although it was accepted that the offending vehicle was duly insured.

7. The Tribunal, after appreciating the evidence and material on record came to the conclusion that the offending vehicle was being driven in a rash and negligent manner, hit the truck resulting in the driver of the truck namely; Bhuri Singh sustained grievous injuries and later on died in hospital and accordingly after considering the income and age of the deceased as well as other relevant factors, awarded compensation in favour of the claimants-respondents to the tune of Rs. 5,27,000/- under various heads. Hence this appeal by the appellant-Insurance Company assailing the award passed by the Tribunal.

8. The appeal has been filed by the appellant-Insurance Company mainly on the ground that the Tribunal awarded excessive compensation and has wrongly assessed the monthly income of the deceased at Rs. 4,000/- per month despite the fact that no documentary or any other convincing evidence was led by the claimants-respondents to prove such monthly income. It has also been averred that the Tribunal has erred in deducting 1/4th share towards self expenditure whereas the deduction for self expenditure should have been 1/3rd.

9. After having gone through the material available on record including the award impugned, in my view, there is no substance in the instant appeal in view of the fact that though no certificate regarding salary of the deceased was produced and the owner of the truck where the deceased was working as a driver was not examined but Smt. Soma Devi wife of the deceased was examined as AD-1 and she stated in her statement on oath that her husband was earning Rs. 4,000/- per month as salary and Rs. 2,000/- per month for expenses and since the statement made by Smt. Soma Devi was not controverted by the appellant-Insurance Company and no evidence was led by it in rebuttal, the Tribunal acted in just and fair manner in treating the monthly income of the deceased at Rs. 4,000/- and in arriving at a finding in this regard. Even otherwise, the deceased was admittedly a driver of a truck which is a commercial vehicle and aged about 37 years was highly experienced driver and certainly would have been getting Rs. 4,000/- per month as salary and salary of Rs. 4,000/- per month cannot be

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said to be excessive. As regards the deduction made of 1/4th, the Tribunal has acted in accordance with law in applying the deduction of 1/4th looking to the number of dependents who are seven and is in accordance with the law laid down by Hon''ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, As regards, the quantum of compensation, just, reasonable, proper and fair compensation is to be awarded and in my view, the Tribunal after considering the evidence in detail has awarded the compensation which is just and proper compensation and cannot be said to be excessive in any manner and in my view, the award passed by the Tribunal is also in consonance with the law laid down by this Court as well as the Hon''ble Apex Court in catena of cases and I find no illegality, perversity or error in the award passed by the Tribunal so as to call for interference by this Court.

10. For the reasons stated above, this Court does not find any illegality or perversity in the impugned award. The appeal being devoid of any merit is, hereby, dismissed.

11. The amount lying in the form of FDRs'' with the Registry in this case be sent to the concerned Tribunal immediately on maturity of the FDRs, which would be on 31/12/2014, so as to enable the Tribunal to disburse the compensation amongst the claimants in terms of the award. In case of premature encasement, there would be substantial loss of interest, therefore, it would be in the interest of the respondents to keep the FDRs till 31/12/2014 which is the due date and Tribunal may disburse immediately thereafter.

12. Since no one has appeared from either side, let copy of this order be sent to the Tribunal for compliance as well as to the appellant and respondent No. 1.

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