
(2016) 08 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 1502 of 2007

United India Assurance Co. Ltd.

APPELLANT

Vs

Sawai Ram

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2016) 3 DNJ 1328

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

Bench : Single Bench

Advocate : Mr. Jagdish Vyas, Advocate, for the Appellant; Mr. A.R. Nikub, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Arun Bhansali, J.—This appeal is directed against the judgment and award dated 31.03.2006 passed by the Motor Accident Claims Tribunal, Jodhpur ("the Tribunal"), whereby the Tribunal has awarded the a sum of Rs. 4,50,000/- as compensation to the claimants along with interest @ 7.5% w.e.f the date of filing application i.e. 13.01.2003.

2. The application for compensation was filed by the claimants-parents of one Pappu Ram, inter alia, with the averments that on 15.09.2002, Pappu Ram and Khima Ram were driving Truck No. RJ-19-1G-2244 and while the vehicle was being plied on the Chavrali Highway Road, the tyre of the Truck bursted and the vehicle in question was parked on the side of the road and indicators were switched on and stones were placed. However, at about 4:00 in the morning, another Truck No. RJ-07-G-0007, which was being driven rashly and negligently came and collided with the Truck being repaired by Pappu Ram and Khima Ram from the front side. The deceased Pappu Ram was in the process of changing the tyre by putting the Truck on the jack and on account of impact, the jack gave way and Pappu Ram came under the tyre. On account of injuries suffered by Pappu Ram, he expired. It is, inter alia, claimed that the deceased was aged 25

years was working as Truck driver and was employed with Dama Ram S/o. Ishwar Ram and compensation to be tune of Rs. 35,72,500/- was sought.

3. The application was opposed by the respondents. It was, inter alia, claimed that the deceased himself was responsible for the accident as the vehicle was parked on the road, which resulted in accident and, therefore, the non-claimants were not liable for making payment of compensation. The Insurance Company also filed reply and disputed its liability.

4. The Tribunal framed four issues and came to the conclusion that the accident occurred on account of sole negligence of the driver of Truck No. RJ-07-G-0007, the Insurance Company was liable to make payment of amount of compensation.

5. While considering the quantum of compensation, the Tribunal came to the conclusion that income of the deceased as driver can be taken at Rs. 3,000/-, deducted 7rd towards his personal expenses, applied multiplier of 17 based on the age of the deceased, awarded Rs. 15,000/- towards funeral expenses, Rs. 5,000/- towards the treatment, Rs. 2,000/- towards hospitalization charges and Rs. 10,000/- each towards love and affection and in all awarded a sum of Rs. 4,50,000/- as compensation along with interest as indicated hereinbefore.

6. It is submitted by the learned counsel for the appellant that the Tribunal committed error in coming to the conclusion that the accident occurred on account of the negligence of the insured vehicle, inasmuch as, admittedly the vehicle was parked on the road and, therefore, it cannot be said that the deceased Pappu Ram was not negligent and the accident did not occurred at least on account of his contributory negligence. Further submissions were made that the compensation awarded is excessive and only just compensation was required to be awarded by the Tribunal.

7. Learned counsel for the respondents supported the award impugned.

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

9. In so far as the alleged contributory negligence of deceased Pappu Ram is concerned, it was the specific case of the parties that when the Truck was parked on the road for the purpose of changing of rear wheel, stones as well as some branches of trees were placed to indicate the same and the indicators were on, however, the driver of the offending vehicle, even while coming from the opposite direction, has struck the Truck in question. Further the accident has taken place at 4:00 a.m. and it cannot be said that at 4:00 a.m., the required work pertaining to the change of the wheel could have been done by the deceased Pappu Ram along with Khima Ram without any light/illumination and, therefore, the claim that the accident occurred on account of lack of any light and/or indicators at the site cannot be accepted.

10. Further the fact that the accident has occurred while the vehicle in question was coming from the opposite direction clearly indicates that the respondent

driver did not care about being on the correct side of the road and, therefore, apparently there is no case of contributory negligence and it was on account of sole negligence of the driver of the insured Truck that the accident took place, which resulted in death of Pappu Ram.

11. So far as the quantum of compensation is concerned, looking to the age of the deceased and admittedly that he was driver of the Truck, which was involved in the accident, the income of the deceased at Rs. 3,000/- cannot be said to be excessive from any angle and, consequently, the award of compensation based on the said income cannot be said to be excessive.

12. Further, the award of non-pecuniary amounts also are meager, inasmuch as, for loss of love and affection only Rs. 10,000/- each has been awarded by the Tribunal and further Rs. 15,000/- towards funeral expenses and Rs. 5,000/- towards treatment and other related expenses has been awarded. The award of compensation is just and proper and does not call for any interference.

13. In view of the above discussion, there is no substance in the appeal, the same is, therefore, dismissed.