(2017) 01 RAJ CK 0047

In the Rajasthan High Court

Case No : 3581 of 2011

United India Insurance Co. Ltd. — APPELLANT

Vs

Jenaf Ben Wd/o Ibrahim Bhai — RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Citation : (2017) 01 RAJ CK 0047

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Anil Kaushik,?Kailash Trivedi, ?Digvijay Singh

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and award dated 11.11.2010 passed by the Motor Accident Claims Tribunal, Bali, District Pali (''the Tribunal''), whereby the Tribunal has awarded a sum of Rs.2,95,000/- as compensation for death of one Ibrahim.

2. The application for compensation was filed by the claimants - Jenaf Ben and Sufiya, wife and daughter of the deceased Ibrahim inter-alia with the averments that on 28.10.2006 deceased Ibrahim was travelling in Tempo No.RJ-24-PA-0293, which was being driven rashly and negligently by its driver, the tempo turned turtle, resulting in grievous injuries to Ibrahim, to which he succumbed. It was claimed that deceased Ibrahim was aged about 65 years and was earning Rs.60,000/- per year by

running a grocery shop, a compensation to the tune of Rs.19,70,000/- was claimed.

3. The application was opposed by the non-claimants. Based on the pleadings of the parties, four issues were framed by the Tribunal.

4. On behalf of the claimants AW-1 Jenaf Ben was examined and documents were produced. The Insurance Company produced NAW-1 Shivratan Lohra and exhibited documents.

5. After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving of the driver of the tempo, which resulted in grievous injuries to Ibrahim, to which he succumbed.

6. The plea raised by the appellant - Insurance Company seeking to deny its liability was not accepted. While determining the amount of compensation, the Tribunal came to the conclusion that the deceased was aged 70 years and was earning about Rs.5,000/- per month by running a grocery shop and used to spend Rs.2,000/- on himself and contribute Rs.3,000/- to the family.

7. Based on the age of the claimant - Jenaf Ben i.e. 55 years applied multiplier of 08 and awarded compensation to the tune of Rs. 2,88,000/-, awarded a sum of Rs. 2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection and in all awarded a sum of Rs.2,95,000/- alongwith interest @ 6% p.a. from the date of application.

8. It is submitted by learned counsel for the appellant that the Tribunal committed error in determining the amount of compensation based on the age of the claimant, admittedly, the deceased was aged 70 years and the Tribunal has applied multiplier based on the age of the claimant and therefore, the

award deserves to be modified.

9. Further submissions were made that the Tribunal has wrongly deducted only 40% towards personal expenses and has taken the income of the deceased on the higher side and therefore, the award deserves to be modified.

10. Learned counsel appearing for the respondents supported the award impugned.

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

12. It is not in dispute that the Tribunal came to the conclusion that the age of the deceased Ibrahim was 70 years, even in the application for compensation the age of the deceased was indicated as 65 years. In view of the judgment of the Hon''ble Supreme Court in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr . : (2009) 6 SCC 121, the multiplier in the case of age of the deceased above 65 years has been indicated as 05. The tribunal was, therefore, not justified in applying the multiplier based on the age of the claimant.

13. So far as the amount towards personal expenses and the annual income determined by the Tribunal is concerned, looking to the age of the deceased and the dependent, the determination of amount on personal expenses cannot be said to be incorrect and the income of the deceased at Rs.5,000/- per month from running a grocery shop also cannot be said to be excessive so as to require any interference.

14. In view thereof, the award impugned passed by the Tribunal is modified to the extent that instead of a sum of Rs.2,88,000/- towards loss of income, the claimants would be entitled to a sum of Rs.1,80,000/- towards loss of income, rest of the amount awarded by the Tribunal is not under challenge and the same does

not call for any interference.

15. Consequently, the appeal is partly allowed. It is directed that the claimants would be entitled to a sum of Rs.1,87,000/- as amount of compensation alongwith interest @ 6% p.a. from the date of application i.e. 16.10.2006.

16. Looking to the fact that the claim application was filed way-back in the year 2006 and it is submitted that the respondents have not received any amount pursuant to the award, the entire amount of compensation be paid by the appellant-Insurance Company to the claimant - Jenaf Ben in her Saving Bank Account within a period of six weeks from the date of this judgment.