
(2008) 03 RAJ CK 0048
In the Rajasthan High Court

Vishnu Dutt Kumawvat and Others

APPELLANT

Vs

Shri Chhotu and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 03 RAJ CK 0048

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The present civil misc. appeal u/s 173 of the Motor Vehicle Act, 1988 is directed against the impugned Award dated 16.07.96 passed by the Motor Accident Claims Tribunal, Beawar (for short "the Tribunal") in Claim Petition No. 134/1995, by which the claim petition of the appellants has been partly allowed and compensation to the tune of Rs. 3,59,260/- has been awarded in favour of the claimants/appellants.

2. Brief facts of the case are that on 18.05.95 deceased Kamal Kumawat was travelling in the jeep bearing No. RJ-01-C/2065. The said jeep met with an accident near Sojat City due to rash and negligent driving by the driver of the offending vehicle. In this accident, Kamal Kumawat and some other persons died on the spot.

3. The claimants/appellants filed a claim petition before the Motor Accident Claims Tribunal, Beawar seeking compensation. The Tribunal after hearing the respective parties, vide its impugned Award dated 16.07.96 awarded a compensation to the tune of Rs. 3,59,260/- in favour of the claimants/appellants.

4. Being aggrieved and dissatisfied with the impugned Award passed by the Tribunal, the claimants/ appellants have preferred the instant appeal and more particularly challenged the findings given by the Tribunal on issue No. 5 on the ground that while deciding issue No. 5, it was specifically pleaded and proved by

the appellants that in addition to income from the business of the deceased, he had also income by assisting his father in his business and this aspect has completely been overlooked by the Tribunal while assessing the loss of dependency.

5. The impugned Award has been further challenged on the ground that while assessing the loss of dependency, the Tribunal failed to consider the principle laid down by the Hon''ble Supreme Court in the case of Shusassma Thomas reported in AIR 1993 SC 1631, wherein the Hon''ble Supreme Court has held that the income of the deceased should be doubled keeping in view his age and his future prospects of rise in the life. In the present case, the age of the deceased was only 30 years and he was having his own business and, therefore, it was obligatory upon the Tribunal to have doubled the income of the deceased for loss of dependency in view of the law laid down by the Hon''ble Supreme Court.

6. The impugned Award is further challenged on the ground that while deducting 1/3rd of the income of the deceased towards his personal expenses, the Tribunal has committed an error in not considering that AW4 Smt. Kavita has categorically stated in her deposition that her late husband used to give all his income to her for livelihood of the family.

7. It is further submitted that the Tribunal has seriously erred in adopting the multiplier of 16, which is on very lower side as the age of the deceased at the time of the accident was 30 years and an average age of a person in Rajasthan is taken to be 70 years. Even if it is assumed that earning capacity of the deceased would have been till 65 years, a multiplier of at least 25 years should have been adopted by the Tribunal.

8. Per contra, learned Counsel appearing for the respondent No.3, the United India Insurance Company Ltd., has submitted that it was not the admitted fact that the deceased was 30 years of age at the time of the accident and in the post-mortem report the deceased has been shown as 35 years old. Further the claimants have pleaded that the income of the deceased was Rs. 40,000/- p.a. but they failed to prove that the deceased was earning the said amount per annum. The claimants themselves have produced the photocopy of the income tax return Ex. 8, wherein the income of the deceased of the year 1994-95 has been shown as Rs. 31,235/- p.a. The income of the deceased assessed by the Tribunal on the basis of the income tax return cannot said to be unjustified and the compensation awarded in favour of the claimants/appellants on the basis of the income tax return is just and reasonable.

9. It is further submitted that the wife of the deceased herself has stated that father of the deceased was having his own business in the name of Vishnu Asbestos and the same is running in profit. The appellant Nos. 1 and 2 are the parents of the deceased, but they do not depend upon the income of the deceased.

10. I have heard rival submissions of the respective parties and carefully gone

through the record of the case as also the impugned Award dated 16.07.1996 passed by the Tribunal.

11. In the post-mortem report, the age of the deceased has been shown as 35 years and the income which has been shown in the income tax return has been taken into consideration by the Tribunal while computing the compensation and has rightly assessed the income of the deceased as Rs. 31,235/- per annum and after deducting Rs. 10,000/- for personal expenses, Rs. 21,235/- has been assessed as dependency per annum.

12. The Tribunal looking to the age of the deceased who was 35 years old, has rightly applied the multiplier of 16 and after considering each and every aspect awarded a compensation to the tune of Rs. 3,59,260/- and also awarded Rs. 1500/- for litigation expenses. Thus, the compensation awarded in favour of the claimants/appellants by the Tribunal vide its impugned Award dated 16.07.96 is just and reasonable and the same requires no interference by this Court. No case of enhancement of compensation is made out as the claimants/appellants utterly failed to make out any case of enhancement.

13. Consequently, the present civil misc. appeal seeking enhancement of compensation fails being devoid of merit and the same is hereby dismissed.

14. Record be sent back.