

Lali (Smt.) and ors. Vs. Ramesh and ors.

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SooperKanoon Citation : sooperkanoon.com/769934

Court : Rajasthan

Decided On : Sep-14-2009

Reported in : 2009(3)WLN603

Judge : N.P. Gupta, J.

Appellant : Lali (Smt.) and ors.

Respondent : Ramesh and ors.

Disposition : Appeal dismissed

Judgement :

N.P. Gupta, J.

1. This appeal has been filed by the claimants, inter alia seeking enhancement of the compensation.

2. The necessary facts are that on the fateful day the deceased Gola was travelling in the Truck No. RJB-6363 as a labourer. While the truck was going, the other truck No. GJ-17 T-3969 which was coming from towards Banswara dashed against the Truck No. 6363 on the culvert, as a result of which the deceased died. The deceased was claimed to be earning Rs. 2000/- per month, by working as manual labourer, and by agriculture, and thus Rs. 8,40,000/- have been claimed by way of loss of income. Other amounts have been claimed under different heads

like mental pain and agony, loss of expectation of life, and so on, and a total sum of Rs. 15,62,000/- has been claimed. The claim was contested.

3. The learned trial Court framed four issues. First being regarding negligence, the issue No. 2 was about quantum of compensation, issue No. 3 was about liability of the defendants, and issue No. 4 was about relief.

4. While deciding issue No. 1 it was found that no evidence has been led in rebuttal, and after appreciating the evidence it was found that the accident was result of negligent driving of drivers of both the trucks in which accident two persons being Gola and Kaliya died while Savita, Bhima, Senga and Duda received simple and grievous injuries. Deciding issue No. 2 in the claim of the appellants being Claim No. 65, it was found by the learned trial Court, that no reliable evidence has been led as to how many days a month the deceased used to work, and what was the nature of the work he was doing. However, it was considered that prevalent rate of wages during those days i.e. 1992 was Rs. 22/- per day, and applying multiplier of 15 the compensation payable on that count was assessed at Rs. 79,200/-. Then, regarding expenditure incurred in performance of last rites which was claimed at Rs. 20,000/- has been awarded at Rs. 5,000/-. Then, Rs. 10,000/- has been awarded for loss of consortium. Deciding issue No. 3 it has been found that the insurer of truck No. 6363 is not liable as the cheque given for payment of insurance premium was dishonoured and intimation thereof was given by the insurer to the owner by registered post, and after receipt of that information the owner sent a money order for proportionate amount of premium for the period of 08.04.1992 to 24.04.1992, though subsequently this money order was also refused by the insurer. Thus, it was found that the risk was not covered, and finding that since insurer of truck No. 6363 is not liable, and since the defendant No. 5 happened to be insurer of both the trucks it was held that insurer would be liable to pay half of the amount, and rest half of the amount representing compensation payable by the driver and owner of the truck No. 6363 would be recoverable by the claimants from the owner and driver of said truck No. 6363.

5. Arguing the appeal it was contended, firstly that, the amount of compensation assessed on account of loss of income is inadequate, as Lali has deposed that

deceased was earning Rs. 50/- per day, and there is no evidence in rebuttal to that, and therefore, that amount should have been accepted for assessing compensation. The next submission made is, that Insurance Company has wrongly been exonerated with respect to liability of Truck No. 6363, as after sending intimation about dishonour of the cheque, vide communication dt. 24.04.1992 the owner was asked by the insurer to pay proportionate premium, which was remitted by the owner by money order, but then that money order was refused to be received. The money order is alleged to be available on the record of the Claim No. 112/92 as Ex.A/2 (at page C-36/2).

6. In my view, both the submissions do not have any force.

7. So far as the first contention about quantum of compensation is concerned, Lali as P.W.1 has deposed in examination in chief that the deceased was earning Rs. 50 to 60 per day by putting in manual labour (etnwjh djds dekrk Fkk). Then, in cross-examination she has deposed that he used to receive Rs. 50/- per day. Then, in the cross examination she has deposed that he was giving Rs. 50/- per day to her. It would suffice to say, that the three part of the statements are not even consistent within themselves, and no other reliable evidence has been produced to lend assurance to bare ipse dixit of Lali. May be that there is no evidence in rebuttal, but then that part of the evidence of this witness cannot be accepted as gospel truth, more so when this has not been so pleaded in the claim petition, as in the claim petition it was pleaded that he was earning Rs. 2000/- per month by working as manual labour and by agriculture. As against this in the evidence she has not deposed anything about deceased to be earning anything by agriculture. Learned Counsel categorically admitted that the learned Tribunal has rightly found, that during those days the normal wages were Rs. 22/- per day. It is not shown as to what was abnormal with the deceased, so as to believe, that he was earning Rs. 50/- per day instead of Rs. 22/- per day.

8. In that view of the matter, that finding does not require any interference that the deceased should be taken to be earning Rs. 50/- per day. Since there is no cross objection on the side of the respondent, it would not be open to me to go into the correctness of the multiplier applied so as to reduce the amount of award. As such

the quantum of compensation assessed by the learned Tribunal is maintained, as I do not find any error to have been committed by the learned Tribunal requiring interference in favour of the appellant.

9. Then, so far as the existence of the insurance cover is concerned, it is not shown successfully that any demand of proportionate premium was made by the insurer on 24.04.1992. There are no pleading in this regard in the written statement, and the owner has not mustard courage even to appear in the witness box to depose, either that he did not receive the intimation of dishonour of cheque sent by the insurer, or to depose the insurer to have made any demand of proportionate premium on 24.04.1992, or on any other subsequent date.

10. So far as the money order said to have been sent by the appellant is concerned, it is significant to note that even under signatures of the owner the date of sending money order is mentioned to be 21.09.1993, and it is still more significant to note, that much before this date, the claim petition had not only been filed on 18.08.1992, the replies had been filed, the issues had been framed, claimants' evidence so also even the statement of the Manager of the Insurance Company had also been recorded on 03.09.1993. It is much thereafter that this money order is said to have been sent, which hardly has any bearing in coming to conclusion about existence of insurance cover on the date of accident. No other legal aspect has been shown, on the basis of which it can be said that in the sequence of things the insurance cover existed on the date of accident, so far as Truck No. 6363 is concerned.

11. The net result is, that on the basis of submissions made by the learned Counsel I do not find any ground to have been successfully argued, or made out, requiring interference in the impugned award.

The appeal is, therefore, dismissed.