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SooperKanoon Citation : sooperkanoon.com/770097

Court : Rajasthan

Decided On : May-01-2006

Reported in : II(2006)ACC818; 2007ACJ1175

Judge : Ajay Rastogi, J.

Appellant : Surja Ram

Respondent : Mool Singh and ors.

Disposition : Appeal allowed

Judgement :

Ajay Rastogi, J.

1. Instant appeal was filed by claimant-injured for enhancement of compensation awarded by Motor Accidents Claims Tribunal, Neem Ka Thana (Sikar) in M.A.C.T. No. 45 of 1992.

2. Facts, in brief, are that on fateful day, 8.10.91 at 7 p.m., appellant along with his family members was going on his camel cart from Ranoli to village Sankhuna Ki Dhani on National Highway No. 11, when reached near Bus Stand, Bawri Ke Balaji, offending truck No. RRL 7181 coming from behind with a high speed being driven rashly and negligently had collided with camel cart which resulted in causing grievous injuries to them. The camel succumbed to grievous injuries at the

spot and the cart was completely smashed. As per medical certificate dated 25.1.1995 (Exh. A45), since the claimant sustained grievous injuries including posterior head injury on hemiplegia with difficulty in speech and epileptic fits with 100 per cent disability, was not in a position to record his oral statement before Tribunal; as such his wife Jinki recorded as his power of attorney holder, statement and that apart, Mohanlal, AW 2 (brother) and Chawli, AW 3 (brother's wife) also appeared in witness-box to support the claim petition. Fact which emerges from their statement was that earning of appellant was Rs. 100 per day from camel cart and he had also 8-10 bighas of agricultural land from which he used to earn Rs. 1,500 per month to support his family consisting of seven daughters and one son who were dependent upon him along with his wife. Appellant was hospitalised in Neuro Ward in SMS Hospital, Jaipur, from 8.10.1991 to 22.10.1991 and also produced medical bills along with other documents in support of claim for compensation of Rs. 25,30,263.

3. For adjudication of the dispute, in all six issues were framed. On the basis of material on record, with regard to issue No. 1, the Tribunal recorded finding that claimant has been medically certified with 100 per cent disability and no contrary evidence is available to dispute it and as such, Tribunal proceeded to compute compensation payable to claimant being 100 per cent disabled. But without there being any contrary material on record with regard to issue No. 2, Claims Tribunal determined income of appellant at Rs. 750 per month and with the aid of multiplier of 9, awarded Rs. 81,000 towards loss of income; Rs. 6,000 as medical expenses, Rs. 35,000 towards mental and physical suffering and Rs. 6,000 towards loss of camel and cart. The Claims Tribunal awarded Rs. 1,28,000 towards total compensation.

4. Counsel for appellant contends that there is no contrary evidence available on record whereas according to the evidence adduced by appellant this fact remained undisputed that earning of claimant from his camel cart was Rs. 100 per day and that apart, Rs. 1,500 per month from his agricultural land measuring about 8-10 bighas, as such very premise on which Tribunal proceeding to determine income of the claimant at Rs. 750 per month is not supported by any legal evidence on record and requires interference by this court.

5. Appellant, in fact, has questioned quantum of compensation awarded by the Tribunal particularly with regard to non-pecuniary damages.

6. Respondents, on the other hand, supported the finding of Tribunal with regard to loss of income and submits that finding recorded is duly supported by material on record and what has been awarded is just and reasonable, requires no interference by this court.

7. I have considered the contentions of counsel for the parties and with their assistance, examined material on record. It is settled principle of law that for determination of amount of compensation payable to the victim of road accident, damages have to be assessed for the pecuniary and non-pecuniary damages, whereas the pecuniary damages include actual expenses incurred by claimant, which could be compensated in terms of money whereas non-pecuniary damages cannot be computed on the basis of mathematical calculation, which includes loss of income, physical pain and mental suffering being caused in future for the injury or disability. In the instant case, appellant, as considered by Tribunal, was 55 years of age when he became disabled on account of accident in question, as certified under medical report, Exh. A45, to the extent of 100 per cent disability which observed as under:

Posterior head injury on hemiplegia with difficulty in speech and epileptic fits with 100 per cent disability.

There was no contrary evidence available on record with regard to earning adduced by claimant's wife, AW 1, his brother Mohanlal, AW 2 and his wife Chawli, AW 3 and apart from earning by camel cart, claimant had earnings from 8-10 bighas of agricultural land and his family consists of 9 members who are dependent upon him. It has also been brought to my notice at relevant time that daily wages of Rs. 32 is prescribed under Minimum Wages Act for unskilled labourer. Taking into consideration overall material and also notification issued by the government with regard to unskilled labour, income of claimant ought not to have been less than Rs. 2,000 p.m. and thus viewed, Rs. 750 assessed by the Tribunal for monthly income is not supported by legal evidence on record and that apart, as per age of claimant, multiplier as provided under Schedule appended to the Act is of 8 for age group of 55-60, which in my opinion is appropriate for determination of compensation to the claimant in respect of loss of income which he suffered on account of 100 per cent disability in accident in question. Applying multiplier of 8 instead of 9 as wrongly assessed by Claims Tribunal, loss of income comes to Rs. 1,92,000 (Rs. 2,000 x 12 x 8).

8. As regards compensation towards medical expenses, loss of camel and cart, and mental and physical suffering, to the claimant, Tribunal has awarded Rs. 47,000 (Rs. 6,000 + Rs. 6,000 + Rs. 35,000), which in my considered opinion, requires no interference in the facts and circumstances of the case.

9. Thus, in all the claimant is entitled to compensation of Rs. 2,39,000.

10. Consequently, this appeal is allowed and the claimant is entitled for enhanced compensation for a sum of Rs. 1,11,000 (Rs. 2,39,000 minus Rs. 1,28,000 awarded by Tribunal), which shall also carry interest at the rate of 6 per cent per annum from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by the insurance company through a/c payee bank draft/pay order before the Tribunal within one month.

11. The Tribunal is further directed to deposit the enhanced amount of compensation under Monthly Income Scheme of Post Office for a term of six years in joint names of claimant and his wife, AW 1, who will be entitled to receive monthly interest on Post Office MIS account supra as well as full amount of MIS on its maturity.

12. To the above extent, the impugned award stands modified. No order as to costs.