Kamla and ors. Vs. Sanjeev Kumar and ors.

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Court : Rajasthan

Decided On : Apr-06-2005

Reported in : III(2005)ACC399; 2006ACJ2628

Judge : J.R. Goyal, J.

Acts : Motor Vehicles Act, 1988 - Sections 163A

Appeal No. : S.B. Civil Misc. Appeal Nos. 297, 298, 299, 302 and 303 of 1994

Appellant : Kamla and ors.

Respondent : Sanjeev Kumar and ors.

Advocate for Def. : T.P. Sharma, Adv.

Advocate for Pet/Ap. : Sandeep Mathur, Adv.

Judgement :

J.R. Goyal, J.

1. All these five civil misc. appeals arise out of the same accident, hence are being disposed of vide common judgment.

C.M.A. No. 297 of 1994:

2. The claimants-appellants, who are widow, son, daughter, mother and brothers of the deceased Ram Kishan, filed the Claim Petition No. 533 of 1992 with the averments that on 16.8.1989 at about 4 p.m. Ram Kishan along with other persons was travelling along with his goods in truck No. UAC 9229 from Jaipur to Ajmer. When this truck reached nearby 6 km. ahead of Dudu another truck No. UHQ 934 came from opposite side rashly and negligently driven by its driver and hit the truck in which the deceased was travelling, resulting in death of the deceased Ram Kishan.

3. After trial, learned Tribunal determined the age of the deceased Ram Kishan 35 years, assessed the income at Rs. 750 per month, deducting 1/3rd on account of personal expenses from the income and applying the multiplier of 20 determined the loss of dependency at Rs. 1,20,000 and a sum of Rs. 20,000 for the loss of consortium, love and affection and care and passed an award of Rs. 1,40,000.

4. Learned Counsel for the claimants-appellants submitted that the learned Tribunal assessed the income of the deceased on very lower side ignoring the evidence produced before it and also did not consider the future prospects, advancement and increase in the income of the deceased Ram Kishan. It was also contended that as per the Second Schedule under Section 163A of the Motor Vehicles Act, 1988, minimum income of Rs. 15,000 per annum should have been assessed. It has also been submitted that the learned Tribunal did not make interest as a part of the award.

5. I have considered the above submissions. In the instant case, it is not disputed that at the time of death of deceased Ram Kishan he was 35 years of age. This fact has also come in the evidence that the deceased Ram Kishan was a labourer. Learned Tribunal considering him a casual labourer on the basis of minimum wages, assessed the income of Rs. 750 per month, while wife of the deceased Ram Kishan stated in her statement that her husband Ram Kishan was earning Rs. 1,500 per month. In my considered opinion, in the matters where no satisfactory evidence has been led to prove the fact of annual income of the deceased, considering the fact of future prospects, advancement and increase in the income of the deceased and taking into consideration the provisions of Second

Schedule under Section 163A of Motor Vehicles Act, 1988 as a guideline, minimum income of Rs. 15,000 per annum should have been assessed. Thus, in the instant case under the facts and circumstances, it would be appropriate to determine the notional income of the deceased Ram Kishan at Rs. 15,000 per annum. After deducting usual 1/3rd on account of personal expenses, loss of dependency comes to Rs. 10,000 per annum. Considering the age of the deceased and the age of the claimants in view of the provisions of Second Schedule to the Act, 1988, multiplier of 16 would be appropriate to meet the ends of justice. Thus, total amount towards dependency comes to Rs. 10,000 x 16 = Rs. 1,60,000. Learned Tribunal has awarded a sum of Rs. 20,000 for the loss of consortium, love and affection and care, hence total amount of compensation comes to Rs. 1,80,000. Learned Tribunal did not award interest on the amount awarded as compensation. In view of the judgments rendered by Apex Court in the case of Chameli Wati v. Delhi Municipal Corporation 1985 ACJ 645 (SC) and K.R. Tandon v. Om Prakash : (1998)8SCC421 , interest should have been awarded from the date of filing the application. Thus, it would be appropriate to grant interest at the rate of 6 per cent per annum from the date of filing the application till the payment is made.

6. Consequently, the appeal is partly allowed, the award of the learned Tribunal is modified and the amount of compensation is enhanced to Rs. 1,80,000 from Rs. 1,40,000 with interest at the rate of 6 per cent per annum from the date of filing the claim application till payment. The enhanced amount of compensation along with interest shall be payable after adjusting the amount if already paid as per the award of Tribunal. The enhanced amount shall be deposited in F.D.R. in favour of Kamla, wife of the deceased Ram Kishan, for a period of three years.

C.M.A. No. 298 of 1994:

7. Rang Lal filed the Claim Petition No. 532 of 1992 which also arise out of the same road accident. Rang Lal sustained severe injuries. It is made clear that during the pendency of the claim petition the deceased Rang Lal died on 26.10.1991, hence his legal representatives were substituted and the present appeal has been filed by the L.Rs. of the deceased Rang Lal.

8. After trial, learned Tribunal having taken into consideration the injury report awarded a total sum of Rs. 6,000 as compensation.

9. Learned Counsel for the appellants submitted that in this accident Rang Lal suffered serious injuries, his back bone was fractured and he remained confined on bed till his death.

10. Learned Counsel for the respondent insurance company contended that the deceased Rang Lal sustained only three simple injuries. Considering this fact learned Tribunal awarded just and reasonable compensation.

11. I have considered the rival contentions of learned Counsel for the parties and have perused the record. Kamla, wife of the deceased Rang Lal, examined before the Tribunal stated that due to the accident her husband remained confined to the bed, his back bone was fractured but from the injury report of the deceased Rang Lal it appears that he suffered only three simple injuries. X-ray report or any other kind of medical report has not been produced to show that the deceased Rang Lal sustained any kind of grievous injuries. Thus, learned Tribunal awarded just and reasonable compensation which does not warrant any interference.

12. Consequently, present appeal being without any merit, is hereby dismissed.

C.M.A. No. 299 of 1994:

13. This appeal arises out of the M.A.C. No. 534 of 1992. The claimants are the widow and five minor sons respectively of the deceased Charan Singh who died in the same road accident.

14. After trial learned Tribunal determined the age of deceased Charan Singh at 30 years, assessing his income Rs. 1,200 per month and after deducting '/3rd on account of personal expenses determined the loss of dependency at Rs. 9,600 per annum. Keeping in view the age and life-span of the deceased Charan Singh learned Tribunal awarded a sum of Rs. 2,40,000 as compensation for loss of dependency and a sum of Rs. 25,000 for loss of consortium, love and affection and care and thus passed an award of Rs. 2,65,000 as compensation.

15. Learned Counsel for the appellants submitted that it was not disputed that the deceased Charan Singh was a truck driver, he was getting Rs. 1,500 per month as salary and Rs. 25 per day as allowance but even without keeping in view the future prospects, advancement and increase in income, the Tribunal assessed the monthly income of the deceased Charan Singh at Rs. 1,200 which is on a very low side.

16. Learned Counsel for the respondent insurance company supported the impugned award.

17. I have given my anxious consideration to the rival contentions of the learned Counsel for the parties. It is not disputed that the deceased Charan Singh was a truck driver. The learned Tribunal assessed the income of the deceased Charan Singh at Rs. 1,200 per month on general estimation. While assessing the income of the deceased Charan Singh, truck driver, the Tribunal did not keep in view the future prospects, advancement and increase in earnings of the deceased. In the case of General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas : AIR 1994 SC1631 , the Apex Court has held that while assessing the value of dependency, a higher gross income should be estimated having regard to the future prospects, advancement and increase in earnings of the deceased.

18. Looking to the facts and circumstances of the case and also considering the future prospects, advancement and increase in earnings of the deceased Charan Singh, I think it proper to assess the income of the deceased Charan Singh at Rs. 2,000 per month which comes to Rs. 24,000 per annum. After deducting '/3rd therefrom, on account of personal expenses of the deceased person, the total loss of dependency comes to Rs. 16,000 per annum. Considering the age of the deceased Charan Singh and claimants and taking into consideration the provisions of Second Schedule under Section 163A of the Motor Vehicles Act, 1988 as a guideline, the multiplier of 17 would be appropriate. Thus, total amount of dependency would be Rs. 16,000 x 17 = Rs. 2,72,000. The learned Tribunal has awarded Rs. 25,000 for loss of consortium, love and affection and care. After adding the same, total amount of compensation comes to the tune of Rs. 2,97,000. Learned Tribunal did not award interest on the amount awarded as

compensation. In view of the judgments rendered by the Apex Court in the case of Chameli Wati v. Delhi Municipal Corporation 1985 ACJ 645 (SC) and K.R. Tandon v. Om Prakash : (1998)8SCC421 , interest should have been awarded from the date of filing the application. Thus, it would be appropriate to grant interest at the rate of 6 per cent per annum from the date of filing the application till payment.

19. Consequently, the appeal is partly allowed, the award of the learned Claims Tribunal is modified and the amount of compensation is enhanced to Rs. 2,97,000 from Rs. 2,65,000 with interest at the rate of 6 per cent per annum from the date of filing the claim petition till payment. The enhanced amount of compensation along with interest shall be payable after adjusting the amount if already paid as per the award of Tribunal. The enhanced amount shall be deposited in F.D.R. in favour of Kamla, wife of the deceased Charan Singh, for a period of three years.

C.M.A. No. 302 of 1994:

20. This appeal arises out of M.A.C. No. 347 of 1992. The claimants are the father, mother and brothers respectively of the deceased Shiv Raj who died in the same road accident.

21. After trial, learned Tribunal considering the deceased Shiv Raj as a casual labourer determined his monthly income at Rs. 750 and also considering the fact that the deceased Shiv Raj was not married and thus after deducting half amount as personal expenses assessed the loss of dependency at Rs. 375 x 12 = Rs. 4,500 per annum and keeping in view the age of the parents of the deceased Shiv Raj and after applying the multiplier of 13 assessed total dependency at Rs. 58,500. Learned Tribunal also awarded Rs. 10,000 for the loss of love and affection and passed an award of Rs. 68,500 as compensation....

22. Learned Counsel for the appellants submitted that the Tribunal assessed the income of the deceased on the lower side without appreciation of the evidence and other material available on record. Reliance has also been placed on the judgment delivered in case of Shanti Bai v. Charan Singh : AIR 1999 SC845 , wherein the victim was 18 years of age and a labourer who was getting Rs. 10 per day, Tribunal awarded Rs. 40,000 as compensation. The Supreme Court found

the award too meagre and considering the future economic prospects of the deceased, increased the compensation to Rs. 1,50,000. It was also submitted that the learned Tribunal did not make interest on the amount awarded as compensation.

23. I have considered the rival contentions of learned Counsel for the parties and have perused the entire material available on the record. It is not disputed that the deceased Shiv Raj was an unmarried person. Considering him as a casual labourer and without taking into consideration his future economic prospects only Rs. 750 per month was assessed as his monthly income.

24. Looking to the facts and circumstances of the case and also considering the future economic prospects of the deceased Shiv Raj, I think it proper to increase the award amount to the tune of Rs. 1,50,000 in view of the judgment rendered by the Supreme Court in the case of Shanti Bai, 1998 ACJ 848 (SC). Learned Tribunal did not award interest on the amount awarded as compensation. In view of the judgments rendered by the Apex Court in the case of Chameli Wati v. Delhi Municipal Corporation 1985 ACJ 645 (SC) and K.R. Tandon v. Om Prakash : (1998)8SCC421 , interest should have been awarded from the date of filing the application. Thus, it would be appropriate to grant interest at the rate of 6 per cent per annum from the date of filing the application till payment.

25. Consequently, the appeal is partly allowed, the award of the learned Tribunal is modified and the amount of compensation is enhanced to Rs. 1,50,000 from Rs. 68,500 with interest at the rate of 6 per cent per annum from the date of filing the claim petition till payment. The enhanced amount of compensation along with the interest shall be payable after adjusting the amount, if already paid as per the award of the Tribunal. The enhanced amount shall be deposited in F.D.R. in favour of Rukma, mother of the deceased Shiv Raj, for a period of three years.

C.M.A. No. 303 of 1994:

26. This appeal arise out of M.A.C. No. 531 of 1992. The claimants-appellants are widow, four minor sons and one daughter respectively of the deceased Gajraj Singh who died in the same road accident.

27. After trial, learned Tribunal determined the age of deceased Gajraj Singh at 35 years, assessing his income at Rs. 1,200 per month and applying the multiplier of 20 and after deducting '/3rd on account of personal expenses determined the loss of dependency at Rs. 9,600 per annum. Keeping in view the age and lifespan of the deceased Gajraj Singh learned Tribunal awarded a sum of Rs. 1,92,000 as compensation for loss of dependency and a sum of Rs. 30,000 for loss of consortium, love and affection and care and thus passed an award of Rs. 2,22,000 as compensation.

28. Learned Counsel for the appellants submitted that it was not disputed that the deceased Gajraj Singh was a truck driver, he was getting Rs. 1,200 per month as salary and Rs. 25 per day as allowance but even without keeping in view the future prospects, advancement and increase in income, the Tribunal assessed the monthly income of the deceased Gajraj Singh at Rs. 1,200 which is on the lower side.

29. Learned Counsel for the respondent insurance company supported the impugned award.

30. I have considered the rival contentions of learned Counsel for the parties. It is not disputed that the deceased Gajraj Singh was a truck driver. Learned Tribunal assessed the income of the deceased Gajraj Singh at Rs. 1,200 per month on general estimation. While assessing the income of the deceased Gajraj Singh, truck driver, the Tribunal did not keep in view the future prospects, advancement and increase in earnings of the deceased. In the case of General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas : AIR 1994 SC1631 , the Hon'ble Supreme Court has held that while assessing the value of dependency, a higher gross income should be estimated having regard to the future prospects, advancement and increase in earnings of the deceased.

31. Looking to the facts and circumstances of the case and also considering the future prospects, advancement and increase in earnings of the deceased Gajraj Singh, I think it proper to assess the income of the deceased Gajraj Singh at Rs. 2,000 per month which comes to Rs. 24,000 per annum. After deducting 1/3rd therefrom, on account of personal expenses of the deceased person, the total loss

of dependency comes to Rs. 16,000 per annum. Considering the age of the deceased Gajraj Singh and the claimants and taking into consideration the provisions of Second Schedule under Section 163A of Motor Vehicles Act, 1988 as a guideline, the multiplier of 16 would be appropriate. Thus, the total amount of dependency would be Rs. 16,000 x 16 = Rs. 2,56,000. Learned Claims Tribunal has awarded Rs. 30,000 for loss of consortium, love and affection and care. After adding the same, the total amount of compensation comes to the tune of Rs. 2,86,000. Learned Tribunal did not award interest on the amount awarded as compensation. In view of the judgments rendered by the Apex Court in the cases of Chameli Wati v. Delhi Municipal Corporation 1985 ACJ 645 (SC) and K.R. Tandon v. Om Prakash : (1998)8SCC421 , interest should have been awarded from the date of filing the application. Thus, it would be appropriate to grant interest at the rate of 6 per cent per annum from the date of filing the application till payment.

32. Consequently, the appeal is partly allowed, the award of Tribunal is modified and the amount of compensation is enhanced to Rs. 2,86,000 from Rs. 2,22,000 with interest at the rate of 6 per cent per annum from the date of filing the claim petition till payment. The enhanced amount of compensation along with interest shall be payable after adjusting the amount if already paid as per the award of Tribunal. The enhanced amount shall be deposited in F.D.R. in favour of Ranbiri Devi, wife of the deceased Gajraj Singh, for a period of three years.