SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rewari and ors. Vs. Nathulal and ors.

Rewari and ors. Vs. Nathulal and ors.

SooperKanoon Citation : sooperkanoon.com/771506

Court : Rajasthan

Decided On : Nov-08-2005

Reported in : 4(2006)ACC58

Judge : Ajay Rastogi, J.

Appellant : Rewari and ors.

Respondent : Nathulal and ors.

Judgement :

Ajay Rastogi, J.

1. Instant appeal has been filed for enhancement of compensation awarded by Motor Accident Claims Tribunal Jaipur ('Tribunal') vide Award dated 30.8.2001 in MACT Case No. 1429/95.

2. Claimants are wife, three minor children, brother and mother of deceased Rambabu, aged 30 years, who was a labourer. As per claim petition, on 2.10.1995 while he was travelling in Jeep No. RJ-14-1C-3615, accident took place due to rash and negligent driving of offending truck No. DL-1G-5174 by its driver, as the offending truck collided with the jeep, thereby deceased died.

3. The Tribunal after taking note of material on record, assessed monthly income of deceased as Rs. 1,500 and after deduction of Rs. 300 towards personal

expenses, determined monthly dependency of the family as Rs. 1,200 and applying multiplier of 14 awarded compensation of Rs. 2,17,000 (including Rs. 15,000 towards loss of consortium to wife and for love and affection to claimants and Rs. 400 towards funeral expenses) with interest @ 9% p.a., from the date of claim petition till actual payment vide impugned Award. Hence this appeal.

4. Mr. S.M. Khemchandani, Counsel for claimants contends that the Tribunal failed to consider future prospects in income of the deceased, so also proper multiplier because as per schedule appended to the Motor Vehicles Act, 1988 ('the Act'), looking to the age of deceased, the Tribunal ought to have applied multiplier of 18, which is an apparent error on the face of record committed, while computing just and reasonable compensation, requiring interference by this Court.

5. Contrarily, Counsel for respondent Insurance Company urged that whatever may be the earning capacity of deceased but the fact is that he was a labourer, Rs. 1,500 is a reasonable wages assessed by the Tribunal in the facts of the case and that apart, instead of 1/3rd deduction, only Rs. 300 has been considered to be his personal expenses and after application of appropriate multiplier, the Tribunal awarded just and reasonable compensation requires no enhancement by this Court.

6. I have considered rival contentions and with their assistance, examined the findings recorded by the Tribunal. It is true that compensation has to be awarded for welfare of the family since they have lost their sole bread-earner and this fact can also not be brushed aside that what has been lost by family in no manner can be replaced but atleast can be compensated which is just, equitable and permissible under the provisions of the Act.

7. After the amendment made in November, 1994 in Section 163A of the Act, has provided Schedule for guidance. As per 2nd Schedule to the Act, even for non-earning members, annual income of Rs. 15,000 has been assessed with no deduction for their personal expenses.

8. In view of settled legal position (supra) and taking note of the fact that the deceased was 30 years of age and was a low paid labourer, and the average age

of an Indian which is considered to be atleast 70 years, multiplier of 18 would be appropriate, which ought to have been adopted in terms of schedule appended to the Act, instead of 14 adopted by the Tribunal. There is no documentary evidence as regards income proof of deceased except oral statement but after taking note of material on record, it cannot be ruled out that deceased was earning livelihood out of source of doing labour work in Anaj Mandi. I do not find any error in finding recorded by the Tribunal that in 1995, monthly wages of labourer was Rs. 1,500, to which proper deduction of Rs. 300 towards personal expenses keeping in view number of dependents, has been made, and monthly dependency of the family has been rightly determined to Rs. 1,200 by the Tribunal. Accordingly, total compensation under this head comes to Rs. 2,59,200 (1200 x 12 x 18).

9. As regards compensation towards loss of love and affection and consortium to wife and claimants, the Tribunal has awarded Rs. 15,000 under this head, which is on much lower side keeping in view age of wife and number of dependents of the deceased. Taking note of the age of deceased, his widow and minor children I deem it proper to award Rs. 10,000 as consortium to the wife as whatever amount awarded under this head is only a solace to provide a lady, and Rs. 5,000 each to three minor children so also to mother of deceased towards love and affection. Thus total enhanced amount under this head comes to Rs. 30,000 (Rs. 10,000 (+) Rs. 20,000 - (5000 x 4). In all the claimants are entitled to compensation of Rs. 2,89,600 (Rs. 2,59,200 (+) 30,000 (+) Rs. 400 funeral expenses awarded by Tribunal).

10. Consequently, this appeal is allowed and the claimants are entitled for enhanced compensation for a sum of Rs. 72,600 (Rs. 2,89,600 minus Rs. 2,17,000 awarded vide impugned Award) which shall carry interest @ 6% p.a., from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by the respondent 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 compensation and interest in FDR for three years in Nationalised Bank in name of claimant-wife who

will be entitled to receive monthly interest on FDR supra as well as full amount of FDR on its maturity. Premature release of aforesaid amount shall be subject to prior permission of the Tribunal. To the above extent, impugned Award stands modified. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com