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Court : Rajasthan

Decided On : May-01-2002

Reported in : RLW2004(2)Raj1065

Judge : Prakash Tatia, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163

Appeal No. : S.B. Civil Misc. Appeal No. 207 of 1994

Appellant : Mangilal

Respondent : Kesra

Advocate for Def. : Sanjeev Johari and; M.L. Khatri, Advs.

Advocate for Pet/Ap. : Rajesh Panwar, Adv.

Disposition : Appeal allowed

Judgement :

Tatia, J.

1. This is an appeal against the Judgment and award dated 29.4.92 passed in civil misc. case No. 49/90 by which the Motor Accident Claims Tribunal passed the total award of Rs. 32,000/- in favour of claimants.

2. The brief facts leading to the present case are that on 12.5.90, in the morning at about 9.30 AM, deceased Ladhuram was hit by truck bearing No. RJ. 4-G 0030. The above truck was being driven by one Kesra, respondent No. 1. The respondent No. 2 is the owner of the vehicle; whereas respondent No. 2 is the insurer of the vehicle. It was claimed by the claimants that deceased Ladhuram was of the age of 45 years at the time of accident and truck hit him from behind causing serious injuries resulting into death of Ladhuram. The life expectancy of Ladhuram was alleged upto 70 years only and it was submitted that he would have earned upto age of 70 years. Deceased Ladhuram was earning Rs. 2000/- per month, therefore, according to claimants, they are entitled to Rs. 3 lacks as loss of income in 25 years of the life expectancy of deceased Ladhuram. The claimant No. 2 also claimed Rs. 50,000/- on the ground of loss of consortium, mental shock etc. The claimant No. 1 claimed Rs. 50,000/- for mental shock and deprivation of love of the father and also deprivation of proper guidance of father. In total, claimants claimed Rs. 5 lacks against the non-claimants/respondents.

3. A reply was filed by non-applicant No. 1 and it is submitted that as per post mortem report, deceased was of the age of 65 years, rest of the averments were denied, it was also submitted that income of deceased was shown by exaggerating the amount and the accident occurred due to negligence of deceased Ladhuram himself. The non-claimant No. 3 Insurance Company also submitted the reply to the claim petition denying most of the facts due to want of knowledge.

4. The trial court after hearing the arguments, awarded total sum of Rs. 32,000/- only holding that there was negligence in the driving of driver of the truck and learned Tribunal further held that deceased Ladhuram was earning Rs. 2000/- per month and the Tribunal deducted one third of the above amount against expenses likely to be incurred by deceased himself and assessed the loss to be claimants as Rs. 1334/- per month only. The Tribunal held that deceased was of the age of 65 years and he would have earned only for 2 more years, therefore, total award allowed by Tribunal is Rs. 32,000/- by assessing annual loss of income as Rs. 16,000/-.

5. It is submitted in the memo of appeal that the Tribunal has committed illegality in determining the age of deceased, in fact deceased was of the age of 45 years and deceased was businessman of Barmer city and his monthly income was Rs. 2000/-. It was also submitted that Tribunal has committed illegality in holding the dependency as 2/3 of the income of the deceased.

6. I perused the record, it is an admitted case of claimants themselves that deceased would have earned upto age of 70 years. The claimants' case is that deceased was of the age of 45 years at the time of accident. This fact appears to be not correct in view of the fact that in the post mortem report, age of deceased was shown as 64 years. This document was produced by the claimants themselves and an admitted document. It is also on record that deceased's son Mangi Lal was of the age of 35 years at that time, therefore, the plea of claimants that deceased was of the age of 45 years at the time of accident cannot be believed. Therefore, the learned Tribunal has rightly held that age of deceased was 65 years at the time of accident and I do not find any illegality in it.

7. The Tribunal recorded the finding of fact that deceased was earning Rs. 2000/- per month but Tribunal has not assessed the future prospects of income of deceased. Looking to the age of deceased which is found to be 65 years, the future prospects of earning of deceased was not good, therefore, Rs. 500/- can be taken as average future prospects income of deceased, but at the same time, deceased would have utilised atleast Rs. 500/- per months for himself looking to his old age and would have spared Rs. 2000/- for his family members, therefore, dependency of claimants can be assessed as Rs. 2000/- per month which comes to Rs. 24,000/- per annum. Looking to the present trained of longevity and looking to the evidence that brother of deceased was alive and who is of the age of 73 years, therefore, it will be appropriate to apply the multiplier of 5 in this case which will be as claimed by claimants themselves because claimants themselves have stated in the claim petition that deceased would have earned upto the age of 70 years, therefore, claimants are entitled for Rs. 24,000/- per annum for 5 years, which comes to Rs. 1,20,000/-, therefore, finding on issued No. 2 is modified and it is held that claimants are entitled for Rs. 1,20,000/- instead of Rs. 32,000/-. It appears from the award that Tribunal has not awarded any amount to the

claimants on the ground of deprivation of loss of consortium to the applicant No. 2.1 deem it proper to award Rs. 20,000/- applicant No. 2. The applicant No. 1 is also entitled for Rs. 10,000/-for loss of love and affection of his father as well as applicant No. 2 is also entitled for above amount of Rs. 10,000/- on account of loss of love and affection as well as mental shock. Therefore, the claimants are entitled for total amount of Rs. Rs. 1,60,000/-instead of Rs. 32,000/- only. The claimants will be entitled to interest @ 9% per annum from the date of filing of claim petition over the enhanced amount.

8. Hence, appeal of the appellants is allowed. The appellants are entitled to claim of Rs. 1,60,000/- instead of Rs. 32,000/- only. The claimants/appellants will be entitled to interest @ 9% per annum over the enhanced amount from the date of filing of claim petition.

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