Murli Devi (Smt.) and ors. Vs. Sukhveer Singh and ors.

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Court : Rajasthan

Decided On : Dec-03-2008

Reported in : RLW2009(2)Raj1757

Judge : Narendra Kumar Jain, J.

Appellant : Murli Devi (Smt.) and ors.

Respondent : Sukhveer Singh and ors.

Disposition : Appeal allowed

Judgement :

Narendra Kumar Jain, J.

1. Heard learned Counsel for the parties.

2. The claimant-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the amount of compensation in respect of death of one Prabhat, who died in a motor-accident took place on 2nd December, 1996 and being aggrieved with the impugned Award dated 22nd September, 1998 passed by the Motor Accident Claims Tribunal, Kotputali, District Jaipur in M.A.C. No. 18/97, whereby the learned Tribunal awarded a total compensation of Rs. 2,50,000/- with interest at the rate of 12% per annum from the date of claim application i.e. 24th January, 1997 till the date of realization, in

their favour as under:

1. Rs. 2,04,000/- For loss of income2. Rs. 15,000/- For loss of consortium3. Rs. 20,000/- For deprivation of love and affection to the children4. Rs. 6,000/- For deprivation of love and affection and service in oldage to the parents5. Rs. 5,000/- For funeral expenses

3. The only submission of the learned Counsel for the appellants is that the learned Tribunal committed an illegality in not assessing the income of the deceased properly. It is contended that the non-claimants did not appear before the Tribunal despite service of notice, therefore, ex-parte order was passed against them on 28th November, 1997, and exparte evidence was led in the present case. The claimants examined AW-1 Murli Devi Wife of the deceased, AW-2 Nathuram, AW-3 Chhitarmal and AW-4 Tejaram, the father of the deceased, and from all the applicant's witnesses it was clear that the deceased was earning in between Rs. 300/- and Rs. 325/- per day, whereas the Tribunal has assessed his income treating him as non-earning member i.e. Rs. 15,000/- per annum as provided under the Second Schedule appended with Section 163-A of the Act of 1988, which is not proper. He submits that although no documentary or cogent evidence was placed on the record to prove the monthly income of the deceased, but at-least the minimum wages prevalent in the year 1996 i.e. Rs. 70/- per day i.e. Rs. 2100/- per month, should have been taken into consideration. He submits that after deducting l/3rd. amount out of it for his personal expenses the Tribunal should have assessed the dependency amount as Rs. 1400/- per month. The learned Counsel submits that looking to the age of the deceased the Tribunal has rightly applied the multiplier of 17 and this way the amount of compensation comes to Rs. 2,85,600/- (Rupees two lac eighty-five thousand six hundred only). He, therefore, contended that to that extent the amount of compensation may be enhanced. The amount of compensation awarded under other heads has not been challenged by him.

4. The learned Counsel for the respondents defended the impugned Award and contended that the amount of compensation awarded in the present case is just, fair and reasonable, and no interference in it is called for.

5. I have considered the submissions of the learned Counsel for the parties and examined the impugned Award as well as the record of the Tribunal.

6. The Hon'ble Supreme Court in Divisional Controller, KSRTC v. Mahadev a Shetty : AIR 2003 SC4172 , held that the Tribunal is required to pass an Award under Section 168 of the Act of 1988 which appears to be just, fair and reasonable. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. In the present case the deceased was 35 years of age having four children, wife and parents, therefore, in my view, the submission of the learned Counsel for the appellants appears to be correct that the amount of award in the present case is inadequate and the same is liable to be enhanced for the reasons mentioned below.

7. From the record of the Tribunal, it is clear that non-claimant-respondents did not appear before the Tribunal despite service of notice and ex-parte proceeding was drawn against them on 28th November, 1997. The claimants examined four witnesses in support of their case. The statements of AW-1 Murlidevi, AW-2 Nathuram, AW-3 Chhitarmal and AW-4 Tejaram were recorded on 6th June, 1998. The non-claimants did not file any application for setting-aside the ex-parte order or the exparte decree, nor preferred any appeal also.

8. I have examined the statements of AW-1 to AW-4. AW-1 Murlidevi, in her statement, stated that her husband was earning Rs. 300/- to Rs. 350/- per day; AW-2 Nathuram stated that deceased Prabhat was earning Rs. 300/- to Rs. 325/- per day from agriculture as well as milk-vending; AW-3 Chhitarmal also stated that the daily income of deceased was Rs. 300/- to Rs. 325/-; AW-4 Tejaram stated that daily income of the deceased was Rs. 300/-. It is correct that no documentary evidence to prove the income of the deceased has been placed on the record, nor the income-tax return of the deceased has been produced in proof thereof. The Tribunal has disbelieved the testimony of the applicant's witnesses only on the ground that no documentary evidence has been placed on the record. The Tribunal relied upon the Second Schedule appended with Section 163-A of the Act of 1988 and assessed the income of the deceased as Rs. 15,000/- per year taking

him as non-earning member. It is relevant to mention that the deceased was 35 years of age having four children, wife and parents and, in these circumstances, it cannot be assumed that he was a non-earning member. It is understandable that all the witnesses have stated high income of the deceased for the purpose of getting more compensation in respect of death of the deceased, but it cannot be assumed that he was not earning anything at the age of 35 years. In absence of any documentary evidence I am also of the view that the daily income of the deceased in between Rs. 300/- and Rs. 350/-, as stated by the witnesses AW-1 to AW-4, cannot be believed to be true but it can also not be assumed that he was earning only Rs. 15,000/per annum. In these circumstances, I think it fit and proper to assess the daily income of the deceased as Rs. 70/- being the minimum wage, as contended by the learned Counsel for the appellants and, as such, his income is assessed as Rs. 2100/- per month; and, after deducting l/3rd amount out of it for his personal expenses, the dependency amount is taken to be Rs. 1400/- per month i.e. Rs. 16,800/- per annum. I am satisfied that the learned Tribunal has rightly applied the multiplier of 17 looking to the age of the deceased in the present case. Thus, the amount of compensation under the head of loss of income comes to Rs. 2,85,600/-. The compensation of Rs. 2,04,000/- awarded by the Tribunal under the head of loss of income is, therefore, enhanced to Rs. 2,85,600/-. The amount of Rs. 46,000/- awarded by the Tribunal under other different heads, as mentioned above, will also be paid to the appellants. Thus, the total compensation in the present case comes to Rs. 3,31,600/-.

9. Consequently, the appeal is allowed. The impugned Award passed by the Tribunal is modified. The amount of compensation of Rs. 2,50,000/- is enhanced to Rs. 3,31,600/(Rupees three lac thirty-one thousand six hundred). The enhanced amount shall also carry interest at the rate of 6% per annum from the date of the application till the date of realization. The enhanced amount with interest shall be deposited in the fixed deposit in any nationalized bank in the name of the appellant No. 1 Smt. Murlidevi wife of the deceased, for a period of five years, however, the appellant No. 1 will be at liberty to withdraw the interest accrued thereon, on monthly or quarterly basis.

10. The Registry is directed to send back the record of the case to the Tribunal immediately.

11. No order as to costs.