

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

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:: JUDGMENT ::

Smt. Shanta Devi & Ors. Vs. Roshan Lal & Ors.

S.B. CIVIL MISC. APPEAL NO.360/1993.

Against the award dated 17.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.196/1988.

Date of Judgment :: 30th November 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Dilip Kawadia, for the appellants.
Mr. Lalit Vyas, for the respondent.

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BY THE COURT:

By way of this appeal against the award dated 17.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.196/1988, the claimant-appellants seek enhancement over the compensation amount of Rs.2,80,000/- together with interest @ 12% per annum awarded by the Tribunal on account of accidental death of Kishan Lal, about 45 years in age, husband of the appellant No.1 and father of the appellants Nos. 2 and 3.

Only the quantum of compensation being the subject matter of this appeal, a brief reference to the background facts would suffice. On 02.05.1988 at about 2:30 p.m., the deceased Kishan Lal riding a motorcycle with one Satya Narain Teli was going to Udaipur from Fateh Nagar; at Debari valley, the motorcycle was hit and dragged along by a truck bearing registration No. DEG 1685; Kishan Lal sustained grievous injuries and succumbed on the spot. The present appellants claimed compensation on account of death of Kishan Lal stating his age at 45 years and his annual earning at about Rs.40,000/- in brokerage while working a Commission Agent and by carrying wholesale business of food-grains at Fateh Nagar. The claimants claimed total compensation in the sum of Rs.6,72,500/- stating pecuniary loss at Rs.6,25,000/- with loss of contribution at Rs. 25,000/- per annum and application of multiplier of 25. The claim application was contested by the insurer of the offending truck and on the pleadings of the parties, the Tribunal framed relevant issues for determination of the questions involved in the case. In oral evidence, the claimants examined the wife of the deceased Smt. Shanta Devi as AW-1, the pillion rider of the motorcycle Satya Narain Teli as AW-2 and son of the deceased Arjun Lal as AW-3. The claimants also produced documentary evidence inclusive of police investigation papers and income

tax assessments of the deceased as Ex.1 to 22. No evidence was adduced by the non-applicants.

After hearing the parties and examining the evidence on record, the Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid truck and held the respondents-non-applicants liable for compensation. With reference to the insurance policy, the insurer was held liable to satisfy the award of compensation and other objections raised by the insurer were rejected for want of evidence.

Taking up quantification of compensation, the Tribunal noticed the assertion of the claimants about income of the deceased in the range of about Rs.40,000/- per annum but then referred to the income tax assessment orders and noticed that the income of the deceased was shown at Rs.39,910/- for the assessment year 1987-88; at Rs.22,700/- for the assessment year 1982-83; at Rs.21,880/- for the assessment year 1983-84; at Rs. 44,230/- for the assessment year 1984-85; and at Rs.22,350/- for the assessment year 1985-86. The Tribunal observed that the income of a commission agent fluctuates and so did the income of the deceased and, therefore, considered it proper to assess loss of dependency at Rs.20,000/- per annum. The Tribunal also referred to the admission of the claimants that the business of

the deceased was being looked-after by his sons respectively in 25 and 19 years of age and in the overall circumstances applied a multiplier of 13 on loss of dependency at Rs.20,000/- per annum. The Tribunal further allowed Rs.15,000/- towards loss of consortium and adding other component towards funeral expenses in all found it proper to allow compensation in the sum of Rs.2,80,000/-. The Tribunal also allowed interest @ 12% per annum from the date of filing of claim application.

Assailing the award aforesaid on its quantification of compensation, learned counsel for the appellants has strenuously contended that the assessment orders of the deceased show a gradual growth in income and in any case when he was 45 years in age and was already in the process of expanding and multiplying his business, the Tribunal has erred in taking loss of dependency only at Rs.20,000/- per annum and then in applying a lower side multiplier of 13 and, therefore, the award deserves modification by enhancement. Per contra, learned counsel for the insurer has submitted that the income tax assessment orders placed on record make it clear that the income of the deceased was not showing gradual growth but was fluctuating as is evident from the income tax return for the assessment year 1985-86 where the income has shown a sharp decline from the previous year and in the overall circumstances of the case, the figure of

Rs.20,000/- per annum adopted by the Tribunal towards loss of dependency rather stands on higher side.

Having examined the considerations adopted by the Tribunal and having scanned through the record of the case, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

So far the income of the deceased is concerned, from Rs.22,700/- for the assessment year 1982-83 (Ex.18) it has shown decline for the assessment year 1983-84 to Rs.21,880/- (Ex.19). It has registered a sharp increase in the assessment year 1984-85 to Rs.44,230/- (Ex.20) but has shown equally a sharp decline in the assessment year 1985-86 at Rs.22,350/- (Ex.21). His income has of course been shown at Rs.39,910/- for the assessment year 1987-88 (Ex.5) but has been shown at Rs. 33,230/- for the assessment year 1988-89 (Ex.22). The figure of income for the assessment year 1986-87 is not available. Obviously, it does not appear safe to conclude that the income of the deceased was always on a rising trend and the element of uncertainty was rather more prominent. Then, essentially the source of larger component of income consists of the share of the deceased in the firm M/s. Mahaveer Trading Company and by its very nature, a part of business income retains itself to the claimants in the form of existing business admittedly being

taken care of by the sons of deceased.

In the overall circumstances of the case, when the Tribunal has taken dependency at Rs.20,000/- per annum it obviously means that the Tribunal has taken average income of the deceased at Rs.30,000/- per annum and the figure of dependency has been arrived at after deducting one-third on the personal expenditure of the deceased. The estimate put by the Tribunal is not inadequate and rather stands on higher side. Application of multiplier of 13 too, in the fact situation of this case is not on the lower side. Pecuniary loss assessed by the Tribunal in the sum of Rs.2,60,000/- in the present case by all standards leans towards higher side, if not being highly excessive. The Tribunal has further added Rs.20,000/- and such an amount is also not inadequate towards non-pecuniary loss for the three claimants and for funeral expenses. It may be pointed out that the son of the deceased Arjun Lal, AW-3 stated in his deposition that his father spent on the marriage of the five sisters and on his marriage apart from constructing big houses at Udaipur and Sanwar. The claimants have chosen not to implead the said daughters of the deceased who were admittedly got married during the lifetime of the deceased.

In the overall circumstances of the case, the award of compensation in the sum of Rs.2,80,000/- to the wife and major sons of the deceased does not appear inadequate

or insufficient. The Tribunal has further allowed interest @ 12% per annum that too is not on the lower side.

In the aforesaid view of the matter, there appears no scope for any enhancement in the award made by the Tribunal.

Consequently, the appeal fails and is dismissed. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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