IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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:: JUDGMENT ::

United India Insurance Company Limited Vs. Smt. Hemlata & Ors.

S.B. CIVIL MISC. APPEAL NO.378/1993.

Against the award dated 09.07.1993 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.70/1991.

Date of Judgment :: 30th November 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K. Mehta, for the appellant.
Mr. Roshan Lal, for the respondents.

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BY THE COURT:

This is insurer's appeal questioning the award dated 09.07.1993 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.70/1991 essentially on its quantification of compensation where the Tribunal has assessed the loss for the claimants, wife and three minor children of the accident victim Dr. Himmata Ram, about 32 years in age, earning salary income of Rs.3,649/- per month while working as a Medical Officer in Government Hospital at

Gudamalani (Barmer) at Rs.9,90,000/- and awarded compensation after deducting Rs.25,000/- allowed under No Fault Liability in the sum of Rs.9,65,000/- together with interest @ 12% per annum with stipulation regarding rate of interest at 15% per annum for non-payment within three months.

Only the quantum of compensation being the subject matter of this appeal, a brief reference to the background facts would suffice. The accident in question occurred on 17.04.1991 at mid-night near Juni Nagar bus stand when the deceased Dr. Himmata Ram riding a motorcycle with a clerk Bakhta Ram going from Khudala to Gudamalani sustained grievous injuries on the motorcycle being hit by a truck bearing registration No. RNQ 4782 coming from the opposite direction; the fuel tank of the motorcycle caught fire and both the riders of motorcycle, Dr. Himmata Ram and Bakhta Ram, died on the spot for the burn injuries. Stating the liability of the non-applicants, owner, driver and insurer of the truck in question, the wife and three minor children of the deceased Dr. Himmata Ram claimed compensation with the submissions that the deceased was about 32 years in age, was employed as a Medical Officer with the Government of Rajasthan, and was earning salary income of Rs. 3,649/- at the time of his death, With reference to his date of retirement of 30.09.2017, the claimants claimed pecuniary loss at

Rs.16,75,644/- and adding other losses including damage of the motorcycle, non-pecuniary loss and transportation, the claimants claimed compensation in all in the sum of Rs.17,81,644/-. Upon the application for compensation being put to contest by the non-applicants, the Tribunal framed necessary issues and after taking evidence led by the parties, the Tribunal held in issue No.1 that the accident occurred for rash and negligent driving of the truck in question leading to death of both the motorcycle riders; and in issue No.2 the accident was found to have been caused by the driver of the truck while working in the employment of its owner.

Taking up quantification of compensation, the Tribunal accepted the age of the deceased Dr. Himmata Ram at 32 years as shown in his service record and his salary income at Rs.3,649/- per month. The Tribunal after deducting one-third on his personal expenditure and with reference to his expected date of retirement, observed that he was likely to remain in Government service for another 26 years and 4 months; and taking the annual figure of Rs.29,184/- observed that the deceased would have contributed Rs.9,46,600/- and the claimants were deprived of this amount and they were entitled to recover the same from the non-applicants. The Tribunal further noticed that the motorcycle in question was about 6-7 years old but was totally damaged in the accident and

assessed the loss on that count at Rs.14,400/-. The Tribunal further allowed Rs.7,000/- to each of the claimants towards non-pecuniary loss and further Rs.1,000/- for transportation of the dead body. In this manner, the Tribunal found the claimants entitled in the sum of Rs.9,90,000/- and after deducting Rs.25,000/- allowed under No Fault Liability made the award for the remaining amount of Rs.9,65,000/- and allowed interest @ 12% per annum from the date of filing of the claim application, i.e. 20.07.1991 with the stipulation that for non-payment within three months, interest shall be payable at the rate of 15% per annum.

The insurer has assailed the award aforesaid with the submissions : (a) that the Tribunal has erred in adopting a multiplier of 26 years and 4 months of remaining service tenure of deceased and assessing pecuniary loss on that basis; (b) that the assessment so made suffers from major arithmetical error and on correct calculation even on the basis of the figures adopted by the Tribunal pecuniary loss would come to Rs.7,68,512/- and not Rs. 9,46,600/- as calculated; (c) that the Tribunal has allowed Rs.14,400/- towards property damage of the motorcycle but the liability of the insurer in relation to the property damage of a third party was limited upto Rs.6,000/-; and (d) interest has been awarded at a higher rate and penal rate of interest is not justified. Per contra, it has been submitted

on behalf of the claimants that the award on its quantification of compensation remains rather on the lower side where the Tribunal has not taken into consideration future prospects of the deceased who was in a settled job as a Medical Officer with the Government of Rajasthan and had all chances of substantial increase in income in future and on correct assessment, the award deserves to be modified by upward revision under Or. 41 R. 33 of the Code of Civil Procedure. Learned counsel for the appellant-insurer has referred to the decision of the Hon'ble Supreme Court in Kaushnuma Begum & Ors. Vs. New India Assurance Co. Ltd. & Ors. : 2001 ACJ 428 whereas learned counsel for the claimants-appellants has referred to the decisions of the Hon'ble Supreme Court in Mahant Dhangir & Ors. Vs. Madan Mohan & Ors. : AIR 1988 SC 54 and of this Court in Smt. Kalli @ Kalyani & Ors. Vs. Indra Raj Bairwa & Ors. : 2004 WLC (UC) 789.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is of opinion that the assessment of compensation by the Tribunal in the present case has not been proper and the award in question being too excessive than that of just compensation, deserves suitable modification by downward revision.

It may be pointed out that ordinarily in an appeal by the insurer in a vehicular accident case, this Court would not

have permitted the insurer to question the quantum of compensation particularly when the claim application has been contested by the owner and driver of the vehicle also and no permission to contest the claim on merits has been accorded to the insurer. However, the award in question remains shockingly unjustified to the extent that it does not remain an award of just compensation and, in the circumstances of the case, requires modification. Before coming to the incorrectness of the principles of assessment adopted by the Tribunal, relevant it is to notice in the first place that even on the very consideration adopted by it, the Tribunal has chosen to make a calculation that is inexplicably erroneous. The Tribunal has said,-

> "दुर्घटना के वक्त डा. हिमताराम को 3649 रूपये मासिक वेतन मिलता था । वह सरकारी चिकित्सालय में चिकित्सक के पद पर नियुक्त था । इस पर भी कोई विवाद नहीं है । मृतक की सेवानिवृत्ति की तिथि 2017 थी इस पर भी कोई विवाद नहीं है । 1/3 हिस्सा मृतक स्वयं पर होने वाले खर्च को निकालने के बाद मृतक की मासिक आय 2432 रूपये हो जाती है जिससे उसकी वार्षिक आय 29,184/- रूपये हो जाती है । मृतक 26 वर्ष 4 माह सरकारी सेवा में रहता । जिससे उक्त अवधि में 9,46,600/- रूपये प्रार्थीगण को देता । प्रार्थीगण में से अब कोई कमाने वाला नहीं है । प्रार्थीगण प्रार्थीगण को मिलने वाली राशि से वंचित रह गये । इस कारण उक्त राशि का मुआवजा प्रार्थीगण विप्रार्थीगण से प्राप्त करने के अधिकारी है ।"

Obviously, in the aforesaid assessment, the Tribunal has been referring to the figure of Rs. 2432/- as the

figure of monthly dependency after deducting one-third on the personal expenditure of the deceased. This figure leads to annual loss of dependency at Rs.29,184/- as stated by the Tribunal. The Tribunal has chosen to take the period of dependency for total 26 years and 4 months of the service period left by the deceased and has abruptly stated that in this manner pecuniary loss comes to Rs.9,46,600/- The calculation is rather preposterous. Even if the annual figure of Rs.29,184/- is multiplied by the entire of 26 years and 4 months, the result comes to Rs.7,68,512/- and not Rs.9,46,600/-. This has obviously been the reason that while admitting this appeal on 08.11.1993, this Court stayed realisation of the award amount to the extent it exceeds Rs.8,00,000/-.

In the aforesaid view of the matter, where the Tribunal has chosen to make a haphazard calculation, making the award at a highly excessive figure and then has not applied correct principles, the award for compensation as made by the tribunal requires interference and the amount of just compensation payable to the claimants is required to be re-assessed. Learned counsel for the appellant-insurer has rightly submitted that even in respect of the claim application in relation to the accident occurring prior to incorporation of the structured formula in Second Schedule to the Motor Vehicles Act, 1988, the said formula could be adopted for safe guidance.

In the context of the present case where the deceased was about 32 years of age, computation of compensation could be made with application of multiplier of 17 maximum and not for the entire remaining period of service tenure of the deceased as taken by the Tribunal. However, the fact remains that the deceased was in a settled employment working as a Medical Officer with the Government where he had all the reasonable chances of substantial enhancement of income in future. Such future prospects for a person in settled job cannot be ignored altogether as any assessment made on the basis of the static figure of last drawn salary income might not represent the true figure of loss of earning, and thereby, the loss of contribution. Learned counsel for the claimants has contended with reference to the decision in Kalli's case (supra) that the income ought to be doubled with reference to future prospects. This Court is of opinion that in assessment of loss of contribution, every individual case is required to be considered on its own peculiar facts. The deceased in the said case of Kalli was a Sub-Inspector in Police Service in 28 years of age and the claimants were seven persons including widow, four minor children and parents. Having regard to the overall circumstances and in the balance of equities, this Court is of opinion that for the purpose of assessing just compensation to be allowed to the claimants in this case, it would be appropriate

to take average estimate of salary income of the deceased at Rs.6,000/- that would lead to the figure of loss of contribution at Rs.4,000/- per month after deducting one-third on the personal expenditure of the deceased.

On the basis of the loss of contribution at Rs.4,000/- per month, the multiplicand comes to Rs.48,000/- per annum (4000 x 12) and the same could be capitalised by a multiplier of 17 leading to the figure of pecuniary loss at Rs.8,16,000/-. The claimants deserve to be allowed Rs.5,000/- each towards non-pecuniary loss and another amount of Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation of dead body. In the present case, the Tribunal has allowed loss towards property damage of the motorcycle at Rs.14,400/-. In the circumstances of the case, it does not appear appropriate to allow property damage beyond Rs.6,000/- for want of any cogent evidence on record.

In the manner aforesaid, the claimants are entitled for compensation in the sum of Rs.8,45,000/- (8,16,000/- + 20,000/- + 2,000/- + 1,000/- + 6,000/-); and deducting Rs.25,000/- already received, they shall be entitled for Rs.8,20,000/- as against the amount of Rs.9,65,000/- awarded by the Tribunal.

The claim application was made on 20.07.1991 and was decided on 09.07.1993. Having regard to the rates of

interest then prevailing, the rate allowed by the Tribunal at 12% per annum does not call for any interference. However, the stipulation regarding penal rate of interest at 15% per annum cannot be countenanced being obviously contrary to law.

As a result of the aforesaid, this appeal succeeds and is partly allowed; the award of compensation made by the Tribunal in the sum of Rs.9,65,000/- is modified; and instead, the claimants are held entitled for the amount of Rs.8,20,000/- with interest @ 12% per annum from the date of filing of the claim application.

Remaining amount payable under the modified award shall be deposited by the appellant within 30 days from today with the Tribunal and shall be disbursed in the manner and proportion contemplated by the impugned award. In the circumstances of the case, parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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