

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PUR

ORDER
IN
S. B. Civil Msc. Appeal No. 2320/ 2003

Manohari S/o Mangya Ram
Versus
Hansram S/o Revadmal and Others

Date of Order :: 24. 10. 2008

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Sunil Jain, Advocate, for
Shri L. P. Singhal, Counsel for appellant
Shri Virendra Agrawal, Counsel for respondent
No. 3

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By the Court :-

Admit. Shri Virendra Agrawal, Advocate,
appears on behalf of the contesting respondent
No. 3.

Heard learned counsel for the parties.

Injured claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 against the impugned Award dated 8th July, 2003, passed by the Motor Accident Claims Tribunal, Bandikui, District Dausa, for enhancement of the amount of compensation.

The only point argued by the learned counsel for the appellant is that the learned Tribunal committed an illegality in not accepting the birth-date certificate (Exhibit - 92), issued by the Executive Engineer in

respect of age of injured-appellant. He contended that according to this certificate the injured was 49 years of age and as per second schedule the multiplier of 13 ought to have been applied while calculating the loss of income.

The learned counsel for the respondents contended that the injured was admittedly a government servant but he did not produce copy of metric certificate nor produce service book showing his date of birth but he filed one certificate issued by the Executive Engineer of the Public Works Department who had no authority to issue such a certificate, therefore, the Tribunal committed no illegality in not believing the said certificate and on believing the age mentioned in the Injury-Report as well as X-ray Report produced by the appellant himself. He further contended that the appellant suffered no loss of income as he got the entire salary and even increased salary after this incident but the Tribunal still awarded compensation on account of loss of income by applying the multiplier of 11 and determining his age as 50 years. He, therefore, contended that in fact the Tribunal has awarded excess amount of compensation but he did not prefer any appeal, therefore, the amount of

compensation awarded in the present case may be treated as just and reasonable and the appeal may be dismissed.

I have considered the submissions of the learned counsel for the parties and examined the impugned award passed by the Tribunal particularly the finding in respect of Issue No. 3, wherein the Tribunal has observed that as per the Injury-Report (Exhibit-16) and X-ray Report (Exhibit-17), produced by the appellant himself, the age of the appellant is 50 years. So far as certificate (Exhibit-92) showing date of birth, is concerned, the same has been issued by the Executive Engineer of the Public Works Department, who had no authority to issue the same.

The appellant neither produce his metric certificate nor his service book on the record to show his exact date of birth and in absence of these documents the Tribunal recorded a finding that the appellant was 50 years of age and on the basis of second schedule appended with the Motor Vehicles Act, 1988, the Tribunal applied the multiplier of 11 which is allowed for victims between the age of 50 and 55 years. The Tribunal has already applied the multiplier of 11 and awarded a sum of Rs. 1,51,430/- towards the loss of income. The compensation

under other heads was also awarded and thus the Tribunal awarded total compensation of Rs. 1,69,865/- in favour of the claimant.

The Hon'ble Supreme Court in Divisional Controller, KSRTC v. Mahadeva Shetty – (2003) 7 SCC 197, held that compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Hon'ble Apex Court further held that every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. Para 15 of the judgment is reproduced as under:-

"15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for

the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pitance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so it cannot be just. (See *Helen C. Rebello v. Maharashtra SRTC* (AI R 1998 SC 3191)."

In view of the above discussion, I find that the Tribunal was fully justified in determining the age of injured as 50 years on the basis of the Injury-Report (Exhibit-16) and X-ray Report (Exhibit-17) produced by the appellant himself. I do not find any illegality

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or perversity in the finding recorded by the Tribunal in this regard. No other argument has been advanced.

In view of the above discussion, I do not find any merit in this appeal and the same is accordingly dismissed with no order as to costs.

(Narendra Kumar Jain) J.

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