IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

S.B. Civil Misc. Appeal No. 3415/2013
The Oriental Insurance Co. Ltd. V/s. Smt. Bhagwati Devi & ors.

S.B. CIVIL MISC. APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT, 1988 AGAINST THE ORDER DATED 26-07-2013 PASSED BY SHIR JAGMOHAN SHARMA, RHJS, JUDGE, MOTOR ACCIDENT CLAIM TRIBUNAL AND ADDITIONAL DISTRICT JUDGE NO.14, JAIPUR MAHANAGAR (RAJ.) IN MACT CASE NO. 191/2012 (1698/09), SMT. BHAGWATI DEVI VS. HANUMAN BAIRWA & ORS.

Date of Judgment : 31st October, 2013

HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Kinshuk Jain, for the appellant.

The Oriental Insurance Company Ltd. is aggrieved by the award dated 26.07.2013 passed by the Motor Accident Claims Tribunal and Additional District Judge, No.14, Jaipur Mahanagar (Raj.), whereby the learned Tribunal has granted compensation of Rs. 15,25,544/- to the claimants/respondents.

2. The brief facts of the case are that on 30.08.2009, at about 6:00 pm, Laxman Ram (husband of respondent no.1) was going on his Motorcycle bearing Registration No. RJ-14-HS-7957 from his workplace (Clay Craft India Pvt. Ltd.) Plot No. 766-A, Road No.1, V.K.I. Area Jaipur, Sangam Colony. When he reached Road No. 14, near the lane going towards Hanuman Vatika, a D.I. Jeep bearing Registration No. RJ-14-T-6911 hit the motorcycle of Laxman Ram from the wrong side. Consequently, Laxman

Ram expired. With the loss of the bread earner, the claimants filed a claim petition.

3. In order to substantiate their case, they examined three witnesses, and submitted two documents. The Insurance Company neither submitted any document, nor examined witnesses on their behalf. After going through the oral and documentary evidence, the learned Tribunal granted the compensation as mentioned above. Hence, this appeal before this Court.

4. Mr. Kinshuk Jain, the learned counsel for the Insurance Company, has raised the following contentions before this Court: firstly that the learned Tribunal has erred in assessing the income of Laxman Ram Exhibit.21, the Register for labourers for the month of August, 2009 clearly showed that his income was Rs. 6,500/-. However, a white fluid had been applied on the said figure and it was subsequently changed to Rs. 10,660/-. Instead of taking Laxman Ram's income as Rs. 6,500/-, the learned Tribunal has assessed his income as Rs. 7,815/- per month.

Secondly, the claimants have not produced any payment voucher, which was required by law to be given by the factory where Laxman Ram was working, as a Turner in the Clay Factory. In the absence of the payment voucher, the learned Tribunal ought to have considered the minimum wage payable to a semi-skilled worker. But the Tribunal has failed to do so.

Thirdly, the site plan (Ex.P4) does not indicate in which direction Laxman Ram was riding, and in which direction the offending Jeep was being driven. Therefore,

there is nothing to prove the fact that the Jeep driver was driving the Jeep in a rash and negligent manner.

Lastly, that the learned Tribunal has wrongly applied a multiplier of 16. Thus, the impugned award deserves to be interfered with.

5. Heard the learned counsel for the appellant and perused the impugned award.

6. A bare perusal of the impugned award clearly reveals that the learned Tribunal had noticed the fact that in the Register maintained by the factory, the salary paid to the labourers, certain changes had been made, namely in place of Rs.6,500/-, Rs.10,660/- were written. Considering the fact that figures were manipulated, the learned Tribunal had concluded that it cannot rely on the figure of Rs.10,660/-, as the salary paid to Laxman Ram Hence, the Tribunal had outrightly rejected the plea raised by the claimants that Laxman Ram was being paid Rs.10,660/- per month.

7. Learned Tribunal had gone a step further: it had analyzed Ex.21 and Ex.22, which were showing the salary of co-workers, namely Surendra Singh and Sunil Kumar Singh. The learned Tribunal had noticed the fact that their respective salary were, indeed, incrreased in the month of August, 2009. Whereas Sunil Kumar Singh's salary was incrreased to Rs. 7,562/-, Surendra Singh's salary was incrreased to Rs. 7,815/-. It is only after this comparative assessment was made that the the learned Tribunal had concluded, and in the opinion of this Court rightly so, that Laxman Ram's salary should be taken to be Rs.7,815/-. After all, in the absence of cogent

evidence, the learned Tribunal had to make the best assessment of the situation, which it certainly did. Therefore, the first contention raised by the learned counsel that the learned Tribunal has mis-assessed the income is clearly unacceptable.

8. Merely because a payment voucher was not released by the factory or by the employer to the claimants, cannot shoot down the claimants' pleas. In fact, the Insurance Company has never raised the plea that Laxman Ram was not even an employee of Clay Crafts India Pvt. Ltd. They have admitted the fact that he was an employee of the said company. Thus, merely because a payment voucher has not been produced by the claimants, would not be fatal to their case. Moreover, once the income of the co-workers was ready available before the Tribunal, there was no reason for the Tribunal to rely upon the Minimum Wages Act, applicable in the year 2009. Therefore, the contention raised by the learned counsel that in the absence of payment voucher, the learned Tribunal ought to have applied the minimum wages relevant for the year is untenable.

9. A site plan is merely a corroborative piece of evidence. Even if the investigating officer has not shown the directions of the two vehicles involved in the accident, it does not adversely affect the claimants' case. For the claimants have produced Ram Dev Dhaka, (A.W-2) as an eyewitness of the accident. Ofcourse, the learned counsel for the petitioner has challenged the veracity of Rameshwar Dhaka's testimony on the ground that he was known to the Laxman Ram, the deceased.

Moreover the learned counsel has tried to project Rameshwar Dhaka (A.W.2) as a chance witness or as planted witness. Merely because a person is known to the deceased cannot be a reason for throwing his testimony out of the window. The fact that Rameshwar Dhaka (A.W.2) not only took the deceased to the Hospital, but the fact that he also lodged the FIR clearly proves his presence at the place of the accident. Thus, it cannot be claimed that he is a planted witness. Moreover, considering the fact that Rameshwar Dhaka was returning back home with his brother, Mohan, on their bycycle in the evening clearly makes his presence a normal one. Thus, he is not a chance witness.

10. According to the Rameshwar Dhaka (A.W.2) when Laxman Ram reached the lane which goes to Hanuman Vatika, the offending vehicle, being driven rashly and negligently, came and hit him. Consequently, he fell from his motor-cycle and became unconscious. It is he who rushed him in 108 Ambulance to the nearest Hospital. According to him, the Jeep driver abandoned the jeep and ran away. Merely, because in the cross-examination, he admits that he knew the deceased would not shatter the testimony. For the reasons stated above, there is direct evidence about the negligent and rashness of the driver of the offending vehicle. In these circumstances, it becomes immaterial if the site plan does not show the directions taken by the two vehicles. Therefore, the contention raised by the learned counsel for the appellant that in the absence of relevant information being shown in the site plan, it cannot be concluded that the driver of the vehicle was negligent or rash, such

contention is unsustainable.

11. A bare perusal of the impugned award clearly reveals that while applying the multiplier, the learned Tribunal has relied on the case of *Sarla Verma vs. Delhi Transport Corpration* (*AIR 2009(SC) 3104*) and has applied a multiplier of 16. According to the Second Schedule attached with the Motor Vehicles Act, 1988, for a deceased who is between 30-35, the multiplier is 17. Since the learned Tribunal has reduced the multiplier from 17 to 16, the appellant possibly cannot complain. After all, the Insurance Company has been given the benefit of a reduced multiplier rather than be subjected to an increased multiplier by the Tribunal. Hence, the contention being raised by the learned counsel is misplaced.

12. For the reasons stated above, this Court does not find any illegality or perversity in the impugned award dated 26.7.2013.

13. The appeal being devoid of any merit is, hereby, dismissed.

(R.S. Chauhan), J.

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All corrections made in the judgment/order
have been incorporated in the judgment/order
being emailed." **Anil Makawana** Jr. P.A