

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH
AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 5809 / 2011

Smt Santara & Ors

----AppellantS

Versus

Mehram & Ors

----RespondentS

For Appellant(s) : Mr. RS Rathore

For Respondent(s) : Mr. Virendra Agarwal

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Date of judgment :: March 31, 2017

For the reasons mentioned in the application under section 5 of Limitation Act, the same is allowed and the delay in filing the appeal is condoned.

With the consent of learned counsel for the parties, the arguments were heard and the appeal is being finally decided at this stage.

This appeal has been filed against the impugned judgment and award passed by the Motor Accident Claims Tribunal for enhancement of the quantum of compensation.

Brief facts of the case are that the legal representatives of the deceased Pappu Nath had filed a claim petition before the Motor Accident Claims Tribunal, Ajmer on the grounds

that on 9.4.2006, one Mehram drove Tractor No.RJ-01R-7483 rashly and negligently and collided with Motor Cycle No.RJ-01-1M-8683 resulting death of motorcyclists Pappunath and Kananth claiming compensation of Rs.81,80,000/- as compensation from the opposite parties. The respondents No.1 and 2 filed reply and denied the allegations made in the claim petition. It was pleaded that the vehicle in question was not insured, as such, the insurer-respondent No. 3 is not liable for compensation and prayed for dismissal of the claim petition. The respondent no. 3 ins. Co. had also filed reply and denied the facts of the claim petition. It was averred that three person were travelling on the motor cycle unauthorizedly and they got imbalanced. There was no negligence on the part of Tractor, hence, prayed for the dismissal of the claim petition.

On the basis of the pleadings the learned Judge of the Tribunal has framed as many as five issues including relief. The claimants got examined AW. 1 Santara and AW.2 Ratan Lal. Certain documentary evidence also got exhibited in support of their claim. No evidence in rebuttal was adduced by the opposite parties.

After hearing the parties, the learned Judge has held that the accident dt. 9.4.2006 was occurred on account of rash and negligent driving of Tractor No. RJ-01R-7483 by its driver. While dealing with the amount of compensation, the

learned Tribunal awarded a sum of Rs. 3,91,400/- as compensation, on account of the death of a young man aged 30 years.

Learned counsel for the appellant has contended that the learned Judge of the Tribunal has committed a grave error of law while calculating the income of the deceased Pappunath. It is submitted that age of the deceased was 30 years and as per post mortem report, it was 27 years, meaning thereby age of the deceased was below 30 years. He was doing work of mason and also agriculture work and was earning Rs. 10000/- per month. The claimants also produced a pay certificate (Ex. 15) which disclosed Rs. 6000/- to 6500/- per month. The opposite parties did not lead contrary evidence to this pay certificate. Despite this, the learned Judge of the Tribunal has taken minimum wages i.e. Rs. 2400/- per month and as such, the learned Judge of the Tribunal ought to have given compensation on the basis of proved and un rebutted income of the deceased. He has further contended that the learned Judge of the Tribunal has committed a grave error of law while adopting multiplier of 17. It is submitted that as per IIInd Schedule of the M.V. Act, 1988 and various judgments of the Hon'ble Apex Court as well as this Hon'ble Court, in a age group between 25 to 30 years multiplier of 18 should have been applied, as such, the award is liable to be modified and enhanced on this count

also. He has further contended that the learned Judge of the Tribunal has erred in not considering future prospects of the deceased who died in a young age of 30 years, as such, looking to this fact, the award is liable to be enhanced by this Court.

On the other hand, learned counsel appearing on behalf of respondent-Ins. Company vehemently opposed the submissions advanced above and contended that the learned Tribunal has passed just and proper award, hence, no interference is required in this case and no amount is to be enhanced.

I have heard learned counsel for the parties and perused the impugned judgment/award under appeal.

Looking to the facts & circumstances of the case, I deem it just and proper to increase Rs.2,00,000/- in addition to the amount already awarded by the learned Tribunal.

Accordingly, this appeal is partly allowed, impugned judgment/award is modified, **and** Rs.2,00,000/- is ordered to be enhanced. This amount shall be in addition to the amount awarded by the learned Tribunal and the claimants-appellants are held entitled to get the aforesaid amount. It is also directed that the respondent-insurance company shall deposit the aforesaid enhanced amount with the learned Tribunal within a period of eight weeks from the date of receipt of

certified copy of this order and the same shall be disbursed to the claimant/s immediately. In case the amount is not paid to the claimant/s within the stipulated period of eight weeks, the claimant/s shall be entitled to interest @ 9% per annum on the enhanced amount from the date of passing of this judgment. Rest of the terms under the award shall remain unchanged.

N. H. S.

The impugned award stands modified, as indicated hereinabove.

N. H. S.

(MAHESH CHANDRA SHARMA) J.

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