

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

S.B. Civil Miscellaneous Appeal No. 2340/2017

1. Brijbihari S/o Shri Ram Sahai, R/o House No. 24, Badwala Mohalla, Gadi Sawairam Tehsil Rajgarh, District Alwar.
2. Smt. Sunita Devi W/o Brij Bihari, R/o House No. 24, Badwala Mohalla, Gadi Sawairam Tehsil Rajgarh, District Alwar.

----Appellants

Versus

1. Arshad S/o Shri Mormal R/o Village Patan, Udaipuri, Tehsil Firozpur, Jhirka , District Mewat Haryana Driver.
2. Liyakat S/o Shri Mormal, R/o Near Masjid Pathan, Udaipuri Duha, Mewat, Tehsil Firozpur, Jhirka District Mewat Owner.
3. Ifco Tokyo General Insurance Company Limited, Chamber Bhawan, Chamber Of Commerce And Industries, Delhi Road, Alwar through Manager (Insurance Company).

----Respondents

For Appellant(s)	:	Mr. Ram Sharan Sharma
For Respondent(s)	:	Mr. Ritesh Jain

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Judgment

29/07/2022

Instant appeal has been preferred by the claimants-appellants against the judgment and award dated 25.02.2017 passed by the Court of Motor Accident Claims Tribunal, Alwar (hereinafter referred to as 'the Tribunal') in Claim Case No.327 of 2015 whereby an amount of Rs. 8,04,000/- has been awarded as compensation on account of death of Balram in the accident, which occurred on 21.02.2015.

Learned Tribunal after framing the issues and evaluating the evidence on record and after hearing counsel for the parties,

decided the claim petition of the claimants-appellants and awarded compensation to the tune of Rs. 8,04,000/- under various heads in favour of the claimants-appellants.

Learned counsel for the claimants-appellants submits that the deceased was doing the job of teaching and his monthly income was Rs.10,000/-. Learned counsel further submits that without any basis, the deceased was treated as a Labour and on the basis of the same, his monthly income was determined as Rs.4500/-. Counsel further submits that even if the deceased was treated as a labour, then also, the income of the deceased has been determined in the lower side.

Learned counsel further submits that the accident was occurred on 21.02.2015 and at the relevant time, the minimum wages of a labour was Rs.197/- per day as prescribed by the Department of Labour, Government of Rajasthan. He therefore prays that recomputation of award may be done in light of his aforesaid submissions.

Per contra, learned counsel for the respondent-Insurance Company submitted that the Tribunal while deciding the claim petition has correctly taken into consideration all the factors while calculating the award in the present case on the anvil of evidence produced before it. Thus, the judgment passed by the Tribunal does not call for any interference by this Court.

Learned counsel for the respondent-Insurance Company further submitted that the Tribunal has awarded future prospects to the tune of 50%, while looking to the age of the deceased, the claimants-appellants are entitled to get 40% future prospects only.

I have considered the submissions made at Bar and gone through the judgment and award as well as other relevant documents available on record.

Admittedly, the deceased was 18 years of age at the time of accident. No evidence in support of his work and income has been produced by the appellants-claimants. Therefore, the Tribunal has rightly considered the deceased as a labour, but the Tribunal has incorrectly determined the income of the deceased as Rs. 4500/- per month, without any basis, because at the relevant time, the minimum wages of a labour was Rs.197/- per day, as per the Notification issued by the Department of Labour, Government of Rajasthan.

There is a substance in the submission raised by counsel for the respondent-Insurance Company that looking to the age of the deceased, 40% future prospects should have been granted to the claimants-appellants instead of 50%. Thus, the award is recomputed as under:-

Annual income	Rs. 197 x 30 x 12 = 70,920/-
Add 40 % towards future prospects	Rs.70,920/- + 28,368/- = 99,288/-
Multiplier to be applied	18 Rs.17,87,184/-
Less 1/2 amount towards personal expenses	Rs.17,87,184/- - Rs.8,93,592/- = Rs. 8,93,592/-
Total compensation awardable towards loss of income	Rs.8,93,592/-
Compensation awarded by the Tribunal towards loss of income	Rs.7,29,000/-
Enhanced amount of compensation	Rs. 1,64,592/-

In view of the above, the appellants-claimants would be entitled to get a further sum of 1,64,592/- from the Insurance Company. Insurance company is directed to pay additional amount of 1,64,592/- in addition to the amount already awarded within a period of two months from the date of receipt of certified copy of this judgment. The enhanced amount shall carry interest @ 6% per annum from the date of filing of claim petition till the actual payment is made.

Consequently, the appeal is disposed of in the above terms.

All pending applications, if any stand disposed of.

(ANOOP KUMAR DHAND),J

HEENA GANDHI /33



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