

(2014) 01 RAJ CK 0081

RAJASTHAN HIGH COURT

Case No: Civil Misc. Appeal No. 1832/2004

Prakash Kunwar and
Others

APPELLANT

Vs

Som Singh and Others

RESPONDENT

Date of Decision: Jan. 9, 2014

Hon'ble Judges: Arun Bhansali, J.

Bench: Single Bench

Advocate: Surendra Surana, for the Appellant

Final Decision: Partly Allowed

Judgement

Arun Bhansali, J. ♦ This appeal is directed against the judgment and award dated 05.09.2003 passed by Motor Accident Claims Tribunal, Sirohi ("the Tribunal"), whereby, for the death of one Rugnath Singh, the Tribunal has awarded a sum of Rs. 2,72,000/- as compensation alongwith interest @ 6% per annum from the date of filing application for compensation ("the application") i.e. 18.12.1998.

2. The facts in brief may be noticed thus: the deceased alongwith Leelaram, Vagaram, Bhimaram, Ganeshram, Nagaram and Chhagan alongwith one Obaram was travelling in the Jeep bearing Registration No. RJ-24-T-72 on 26.08.1998 from Shivganj to Sirohi, when at about 09.00 PM, a Truck bearing Registration No. RRN-5055, which was being driven by Som Singh struck the Jeep from behind, which resulted in the Jeep turning turtle and it fell into a ditch, which resulted in all the passengers therein receiving simple and grievous injuries to which ultimately Rugnath Singh and Obaram succumbed.

3. The application seeking compensation was filed by the appellant - wife Prakash Kunwar alongwith three minor children aged 1 to 3 years and parents of the deceased Rugnath Singh. It was, inter alia, claimed that the deceased was aged 32 years and was M.Com., B.Ed. and was serving with Sirohi Polytex as an Accountant and was getting a salary of Rs. 4,500/- per month and claimed compensation to the

tune of Rs. 43,16,000/- A reply to the application was filed by the respondent Nos. 2 and 3 and the liability was denied. Reply was also filed by the Insurer of the Truck and the liability was again denied. During the pendency of the claim petition, the Insurer of the Truck compromised with the claimants on payment of a sum of Rs. 1,00,000/- through "Lok Adalat".

4. The Tribunal framed six issues and after evidence was led by the claimants, it came to the conclusion that the accident occurred on account of rash and negligent driving by driver of the Jeep, which resulted in the accident and, consequent injury to the occupants and death of Ragnath Singh and Obaram.

5. While assessing the quantum of compensation, the Tribunal found the age of the deceased at 32 years, he was educated upto M.Com., B.Ed. and his monthly salary could safely be taken at Rs. 3,000/- per month, personal expenses at 40%; keeping in view that Rs. 1,00,000/- was received by the claimants during the pendency of the application by way of compromise it adopted multiplier of 12 and awarded a sum of Rs. 2,59,200/- as compensation for loss of income; Rs. 2,000/- for funeral expenses; Rs. 2,000/- each to the children of the deceased for loss of love and affection; Rs. 3,000/- to the wife for loss of consortium; Rs. 1,000/- each to the parents for deprivation of support and as such awarded a sum of Rs. 2,72,000/- alongwith interest as noticed hereinbefore.

6. It is submitted by learned counsel for the appellants that it was proved on record that the income of the deceased was Rs. 4,500/- by production of document (Exhibit - 16) and oral evidence of Smt. Prakash Kunwar, there was no reason for the Tribunal to assess the income at Rs. 3,000/- per month only; the deduction for personal expenses is excessive and the multiplier employed is low. It was further submitted that the payment of Rs. 1,00,000/- by the Insurer of the Truck cannot be taken into consideration while assessing the amount of compensation and the award of compensation for loss of love and affection/consortium/support to the claimants is wholly inadequate. It was claimed that looking to the nature of deceased's qualification, the claimants were entitled for grant of compensation on account of future prospects as well.

7. On the other hand, learned counsel for the Insurer of the Jeep submitted that the award impugned does not call for any interference and the award of Rs. 1,00,000/- has to be taken into consideration while assessing the just compensation and the appeal deserves to be dismissed.

8. I have considered the rival submissions.

9. From the record there is no dispute on the aspect that the deceased was M.Com., B.Ed. and the claimants produced Certificate (Exhibit - 16), which is issued by the Director of Sirohi Polytex Private Limited, indicating therein that the deceased was serving with the Company as an Accountant and his monthly salary was Rs. 4,500/- per month. When, wife of the deceased Prakash Kunwar appeared in the

witness-box as AW-1, the Income Certificate was exhibited and she was cross-examined by learned counsel appearing for the Insurer of the Jeep, wherein, she stated that it was wrong to suggest that her husband was not earning Rs. 4,500/- and that the Certificate (Exhibit - 16) was falsely obtained. It is apparent that there was no meaningful cross-examination by the learned counsel for the Insurance Company regarding the Certificate and no question was put beyond the two suggestions made. The Tribunal while considering the said evidence merely noticed the contents of the Certificate and came to the conclusion that it was believable that in view of the qualification of the deceased i.e. M.Com., B.Ed., that he was working as an Accountant and then the Tribunal jumped to the conclusion that the income of the deceased can "safely" be taken at Rs. 3,000/- per month.

10. There was apparently no warrant for the Tribunal to come to the conclusion that the income of the deceased was Rs. 3,000/- per month without either discarding the Certificate (Exhibit - 16) or disbelieving the statement of AW-1 Smt. Prakash Kunwar. The effort of the Tribunal to reach a "safe" conclusion appears to be wholly misdirected. From the documentary and oral evidence available on record and the fact that the deceased was qualified as M.Com., B.Ed., the income of the deceased is assessed at Rs. 4,500/- per month.

11. So far as the grant of future prospects is concerned, while the judgment of Hon'ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#) provides grant of future prospects in a case where a person is in a settled job; the subsequent judgment of Hon'ble Supreme Court in the case of [Santosh Devi Vs. National Insurance Company Ltd. and Others,](#) and [Rajesh and Others Vs. Rajbir Singh and Others,](#) have held that even in case where a person in a private job, he would be entitled to grant of future prospects. In that view of the matter, the deceased is held entitled to future prospects at 30% of the said salary.

12. So far as the deduction for personal expenses is concerned, looking to the number of dependants being six in number, 1/5 amount deserves to be deducted towards personal expenses and in view of the law laid down by the Hon'ble Supreme Court in the case of Sarla Verma (supra) a multiplier of 16 deserves to be adopted. Consequently, the claimants would be entitled to a compensation of (Rs. 4,500/- + 1,350/- = 5,850/- - 1,170/- = 4,680/- X 12 X 16) : Rs. 8,98,560/- towards loss of income.

13. So far as the award of compensation for loss of love and affection/consortium/support to the claimants is concerned, the sum awarded by the Tribunal is wholly inadequate, looking to the fact that the children were aged 1 to 3 years and wife was aged about 28 years, as such, the said amount qua the wife and children is enhanced to Rs. 10,000/- each and for the parents, it is enhanced to Rs. 5,000/- each, as such the claimants would be entitled to a sum of Rs. 50,000/- under the said head; the sum awarded for funeral expenses does not call for any

interference.

14. So far as the sum of Rs. 1,00,000/- received by the claimants by way of compromise in the present proceedings is concerned, it is apparent that the said amount was paid by the Insurer of the Truck, which was ultimately not held liable for payment of compensation and it was only the driver of the Jeep, who was held to be negligent in driving the Jeep, but as the amount was received by the claimants on account of the compromise in the present proceedings, which were launched seeking compensation for the death of Rugnath Singh, the amount, which was paid by the Insurance Company seeking settlement/compromise in the present proceedings, has to be deducted from the compensation.

15. Consequently, the appeal is partly allowed and the award passed by the Tribunal is modified to the extent that the claimants would be entitled to a compensation to the tune of Rs. 8,50,560/- instead of Rs. 2,72,000/- as awarded by the Tribunal alongwith interest @ 6% per annum from the date of filing application i.e. 18.12.1998. The amount shall be disbursed in terms of the award.

16. The amount of enhanced compensation alongwith interest be paid by the respondent No. 3 - United India Insurance Company Limited (Insurer of the Jeep) within a period of two months.

17. No costs.