

(2017) 05 MP CK 0054
In the Madhya Pradesh High Court
Case No : 2850 of 2013

Ankit Singh Parihar s/o M.B. Singh Parihar	APPELLANT
Vs	
State of Madhya Pradesh and four others	RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Rule 33](#) — [Rule 33](#), [Order 41](#) [Rule 22](#) — [Order 41](#) [Rule 22](#) -
[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#)

Citation : (2017) 05 MP CK 0054

Hon'ble Judges : Anjuli Palo

Bench : Division Bench

Advocate : Amrit Ruprah, Devika Singh, Ram Manohar Patel

Judgement

1. This appeal has been filed by the appellant Insurance Company under Section 173(1) of the Motor Vehicles Act, 1988 challenging award dated 10.07.2013, passed by VIII AMACT, Jabalpur in claim case No. 45/2012 whereby Rs. 37,66,372/- has been awarded as compensation jointly and severally under Section 166 of the Motor Vehicles Act, 1988.

2. In brief, the facts of the case are that, claimants/respondent no. 1 to 6 are the dependents of deceased Bakil Singh. On 07.11.2011 deceased Bakil Singh, husband of respondent no. 1 (Smt. Imarti Bai) was going to Shahpura from Belkheda by his motor cycle on the National Highway No. 12. Near Lamheta Tiraha, motor-cycle bearing registration no. MP 49 / MD/2715 driven by respondent no. 7 (Vinod Agrawal) rashly and negligently dashed Bakil Singh because of which he fell down and received injuries. Some people brought him to Bhandari Hospital. During the treatment where he died on 18.11.2011. Therefore, the respondents no. 1 to 6 filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 against the appellant / Insurance Company along with respondent no. 7 who was driving the pillion and respondent no. 8 (owner) claiming for compensation to the tune of Rs.71,50,000/-.

3. It is not in dispute that respondent no. 7 is the driver and respondent no. 8 is the owner of offending vehicle (motor-cycle) bearing Registration No. MP 49 / MD/2715. The learned Tribunal proceeded ex-parte against the respondent no. 7 and respondent no. 8 / owner.

4. The appellant / Insurance Company denied the averments made in the claim petition and its liability on the ground that the deceased himself was negligently driving his motor cycle without holding any effective and valid licence. The owner and the insurance company of the motor-cycle which was being driven by the deceased are also necessary parties. Further, respondent no.7 was not having a valid and effective driving licence at the relevant time. Hence, for breach of the insurance policy, the insurance company / appellant denied its liability to pay compensation.

5. Learned Tribunal drawing adverse inference against respondent no. 7 found that at the time of accident, respondent no. 7 (Vinod) was driving the offending vehicle rashly and negligently, due to which the accident occurred and Bakil Singh sustained fatal injuries which caused his death.

6. Learned Tribunal further found that at the time of accident, Bakil Singh was working as Head Constable in Police Department. As per the statement of Smt. Sushila Devi, ASI and office record (Ex. P/145 and P/147), Bakil Singh was earning Rs. 17,987/- per month. Respondents/claimants no. 1 is the widow of deceased Bakil Singh. Respondents/claimants no. 2 to 5 are their children and respondent / claimant no. 6 is the aged mother of the deceased. Hence, they are the legal representatives and are entitled to receive compensation. The learned Tribunal granted compensation to the tune of Rs. 37,66,372/- from respondent no. 7 / driver, respondent no. 8/owner and the appellant / Insurance Company jointly and severally.

7. The impugned award has been challenged by non-applicant no. 3 / insurance company on the grounds that the Learned Tribunal failed to appreciate the evidence on record. Learned Tribunal holding that the respondents no. 7 & 8 / driver and owner and the appellant insurance company are liable to pay compensation, even then the identification and involvement of the motor-cycle of respondent no. 8 was disputed. In the FIR, the number of the offending motor-cycle is not narrated by the claimants. The deceased was himself negligent hence, for the contributory negligence of the deceased the quantum of compensation deserves to be half and award against the insurance company is liable to be set aside.

8. Perused the record. Heard the counsel for the parties.

9. FIR (Ex. P/2) was lodged against unknown TVS Star City motor-cycle. On the date of accident, the aforesaid motor-cycle was seized from the spot by the Police. Even then, respondent no. 7 did not appear before the Tribunal as a witness. Nor he filed written statement to deny the accident. Therefore, the learned Tribunal after following the principles laid down in the case of Inder

Singh Vs. State of Haryana (1987 ACJ 94), K.K.Jain Vs. Masur Anwar (1990 ACJ 299), MPSRTC Vs. Vaijanti & Ors. (1995 ACJ 560) had rightly drawn adverse inference against the respondent no. 7 / driver that the accident occurred due to his negligence while driving the offending vehicle because of which Bakil Singh died.

10. Learned counsel for the appellant submitted that, the learned Tribunal wrongly assessed the future prospects of the deceased and has added 50% salary. On the other hand, the respondents/claimants No. 1 to 6 have filed cross objection under Order 41 Rule 22 read with rule 33 of the Code of Civil Procedure. It is contended that learned Tribunal wrongly determined the loss of future income by granting 50% increase in the income of the deceased. In normal course, the deceased would have served for 22 years, his salary would have certainly doubled, hence 100% increase of salary be taken into consideration. In the case of Bajaj Allianz Vs. Aditya [ILR (2015) MP 983] Coordinate Bench of this Court in respect of future prospects has held that : "Addition of 50% salary, where the deceased is below 40 years and has permanent job - Addition should be 30% if the age of deceased is between 40 to 50 years - There should be no addition if the age of deceased is more than 50 years and number of dependents are 2 to 3."

11. Therefore, in the opinion of this Court, the learned Tribunal has wrongly assessed the loss of future income of the deceased in the higher side. The future income can be calculated only to the extent of 30% only. Thus future monthly income of the deceased comes to Rs. 23,383/- (Rs. 17,987/- + 30%). Therefore, the finding of learned Tribunal with regard to assessment of monthly income of deceased as Rs. 26,980/- is liable to be corrected. Therefore, the annual income of the deceased can be calculated as Rs. 23,383 x 12 = Rs. 2,80,596 per annum.

12. Learned counsel for the appellant contended that, learned Tribunal has wrongly applied the multiplier of 15. In Bithika Mazumdar Vs. Sagar Pal [AIR 2017 SC 965], the Apex Court has held that considering the age of deceased as 40 years, multiplier of 15 shall be applicable for awarding compensation. Thus total amount of compensation may be calculated (Rs. 2,80,596 p.a. - 56119/- (as 1/5 part) x 15} as Rs. 33,67,155/-.

13. The respondents no. 1 to 6 are dependents of the deceased. Learned Tribunal properly held that 1/5th part of the salary was spent by the deceased on himself. Under similar circumstances, in case of Bajaj Allianz Vs. Aditya (supra), this Court has held as under: "Standard deduction - Where deceased is married, 1/3rd should be deducted towards living expenses - Where number of dependents are 4 to 6, 1/4th should be deducted and 1/5th should be deducted if number of dependents are more than 6."

14. In the light of the above principles, it cannot be said that the Tribunal has wrongly deducted 1/5 part of the salary which could have spent by the deceased on himself.

15. Therefore, after deduction of 1/5th part from the annual salary, loss of income is assessed as Rs. 33,67,155/-, compensation in favour of the respondents / claimants no. 1 to 6. AW-2 / Sushila Devi has not deposed about the increase of salary upto 100%. The deceased was a Government servant. In his lifetime, income tax was deducted from his salary. But after his death certainly 10% amount is essential to be deducted as income tax. Therefore, the cross objection cannot be accepted.

16. This Court is of view that lessor amounts have been awarded under the head loss of consortium (Rs. 5000/-), for loss of estate (Rs. 5000/-) and for funeral expenses (Rs. 5000/-). In the present case it cannot be held that the award amount in every head is on the higher side or excessive.

17. In view of the discussions in the foregoing paragraphs, the appeal is partly allowed. The appellant and respondents no. 7 and 8 are liable to pay Rs. 33,67,155/- with interest as imposed by the learned Tribunal from the date of institution of the claim petition till its realization as compensation to respondents no. 1 to 6 in place of Rs. 37,66,372/- in the impugned award.