(1999) 03 MP CK 0030

In the Madhya Pradesh High Court

Case No : M.A. No. 646 of 1994

Bateshi Bai and Another — APPELLANT

Vs

Udayraj Singh Baghel and Others — RESPONDENT

Date of Decision : 04-03-1999

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2001) ACJ 1034

Hon'ble Judges : P.N.S. Chauhan, J;Dipak Misra, J

Bench : Division Bench

Advocate : Yogesh Dhande, for the Appellant; S.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—In this appeal preferred u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as ''Act'') the claimants have called in question the propriety of the award passed by the Second Additional Motor Accidents Claims Tribunal, Chhindwara, dated 2.5.94, in Claim Case No. 33 of 1991.

2. The facts as have been unfolded are that the husband of the claimant-appellant No. 1, Rehemansha was working as a labourer in the truck bearing No. MPJ 7284 owned by respondent No. 1. On 12.2.91, the aforesaid vehicle was driven by respondent No. 2 in a rash and negligent manner as a result of which it met with an accident in which the husband of the appellant No. 1 sustained injuries and ultimately met his end. It has been stated that the vehicle was insured with respondent No. 3, Oriental Insurance Co. Ltd. The present appellant No. 1 along with her minor daughter preferred an application for compensation pleading, inter alia, that the deceased was earning Rs. 20 per day and he was the owner in possession of 5 acres of land near Piparia. Estimating the monthly wages and taking into consideration the income from agricultural land a claim for Rs. 2,50,000 was put forth before the Claims Tribunal.

3. Respondent No. 1 filed his reply and denied the claim. Objections were also

raised by the insurer on various grounds.

4. The Tribunal on appreciating the material on record came to hold that the accident had occurred due to rash and negligent driving of the vehicle in question, the vehicle was duly insured with respondent No. 3, and hence, it was liable to indemnify the owner. For the purpose of determining compensation the Tribunal held that the monthly income of deceased was Rs. 500 and applied a multiplier of 16 and awarded for loss of consortium Rs. 7,000. In toto, the Tribunal awarded a sum of Rs. 65,600.

5. Assailing the award Mr. Yogesh Dhande, learned counsel for the appellants has contended that the determination made by the Tribunal is not proper inasmuch as at the time of accident the deceased was earning Rs. 20 per day and there was possibility of increase in his salary looking to the increase in the daily wages of the labourers and, therefore, the Tribunal should have considered the future prospects. The learned counsel has also assailed the consortium of Rs. 7,000 on the ground that the Tribunal has erred in expressing its apprehension of remarriage as far as appellant No. 1 is concerned,

6. Mr. S.K. Rao supported the award for the reasons indicated therein.

7. As the Tribunal has arrived at a conclusion that the accident has taken place due to rash and negligent driving of the vehicle concerned and held the insurer liable to pay the compensation, we need not deal with the said aspects. Main issue is fixation of quantum. The evidence on record is that deceased was earning Rs. 20 per day and was the owner of 5 acres of land. The deceased was aged 28 years at the time of accident and would have lived for many more years. Taking into consideration his income, high increase in daily wages of the labourers and future prospects, we are inclined to hold that the monthly income of the deceased should have been assessed at Rs. 1,200. Out of the aforesaid income he would have contributed Rs. 800, i.e., two-third of his monthly income towards the family, and thereby Rs. 800 x 12 = Rs. 9,600 per annum. As the deceased was aged 28 years taking guidance from Schedule given in the Act, a multiplier of 18 has to be applied. Thus, the amount would be Rs. 9,600 x 18 = Rs. 1,72,800. To this loss of consortium of Rs. 10,000 and the funeral expenses of Rs. 2,000 is to be added. Thus, in toto, the claimants would be entitled to Rs. 1,84,800 with interest at the rate of 12 per cent per annum from the date of application. The aforesaid amount would be paid within three months by the respondent No. 3 failing which interest payable would be at 15 per cent per annum.

8. The appeal is accordingly allowed.

In the peculiar circumstances of the case there shall be no order as to costs throughout.

