(2013) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : M.A. No. 3679 of 2007

Bherusingh and Others APPELLANT

Vs

Mahesh and Others RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2014) 2 ACC 680 : (2014) ACJ 642

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

N.K. Mody

1. Being aggrieved by the award dated 22.9.2007 passed by Second Additional M.A.C.T., Kukshi, Distt. Dhar in Claim Case No. 4 of 2007 whereby the claim petition filed by the appellants was allowed and compensation of Rs. 1,65,000 was awarded, the present appeal has been riled. Short facts of the case are that the appellants filed a claim petition before the learned Tribunal alleging that on 13.4.2006 deceased Maniya alias Mohansingh was travelling in the offending jeep which was owned by respondent No. 2, insured with respondent No. 3 and driven by respondent No. 1 rashly and negligently, with the result Maniya fell down and died. It was prayed that the claim petition be allowed and compensation be awarded. The claim petition was contested by respondent No. 3 on various grounds including on the ground that the offending vehicle was insured by Act policy under which premium was taken at Rs. 100 per passenger and the insurance company is liable to the extent of Rs. 1,00,000 per passenger. It was prayed that in the circumstances insurance company cannot be held liable for payment of compensation beyond limits for which passenger was insured. It was also alleged that since the offending vehicle was being used for carrying passengers, while the vehicle was insured for private purpose, therefore, also insurance company cannot be held liable. It was prayed that the claim petition be dismissed. After framing of issues and recording of evidence learned Tribunal

allowed the claim petition and awarded a sum of Rs. 1,65,000 against which present appeal has been filed for enhancement, in which cross-objection has been filed by respondent No. 3 wherein findings regarding liability of respondent No. 3 is challenged.

2. Learned counsel for the appellants argued at length and submits that learned Tribunal assessed the age of the deceased in the age group of 45-50 years, while the deceased was aged 40 years. It is submitted that the learned Tribunal assessed the income of the deceased at Rs. 50 per day and after deducting 1/3rd towards personal expenses applied the multiplier of 13. It is submitted that the income of the deceased is assessed on the lower side and on other heads also amount awarded is on lower side. It is submitted that the appeal filed by the appellants be allowed and amount of compensation be enhanced accordingly.

3. Learned counsel for respondent No. 3 submits that the amount awarded by the learned Tribunal is just and proper. However it is submitted that learned Tribunal committed error in holding respondent No. 3 liable for payment of compensation. It is submitted that the appeal filed by the appellants be dismissed and cross-objection filed by respondent No. 3 be allowed.

4. Keeping in view that the accident is of the year 2006 it appears that the income of the deceased assessed by the learned Tribunal is on lower side, which ought to have been Rs. 3,000 per month. On other heads also amount awarded is on lower side. Appellants are entitled for the following amount:

Thus, the appellants are entitled for a total sum of Rs. 3.37,000 instead of Rs. 1,65.000. The enhanced amount shall carry interest at the rate of 8 per cent per annum from the date of application. So far as cross-objection filed by respondent No. 3 is concerned, cross-objection has been filed after satisfying the award and no appeal has been filed by respondent No. 3. Since respondent No. 3 was of the view that the learned Tribunal has wrongly held respondent No. 3 liable for payment of compensation, then it was the duty of the respondent No. 3 to approach this court without satisfying the award. Once the award is satisfied and no appeal is filed and claimants approach this court for enhancement, at that time cross-objection is being filed, which on the face of it does not appear bona fide. In view of this, appeal filed by the appellants is allowed and the cross-objection filed by respondent No. 3 stands dismissed.

The amount awarded shall be deposited by the insurance company with the learned Tribunal and the learned Tribunal is directed to invest 80 per cent of the said amount on long-term fixed deposit in the name of appellant No. 2 in the nearest nationalised bank in the area where the appellant No. 2 is residing, with the condition that the bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. account of appellant No. 2, which shall be opened by the appellant No. 2 from where appellant No. 2 can withdraw the amount as per her needs. However, on an application by appellant No. 2 this condition could be modified by the learned Tribunal in exceptional circumstances if made out by the appellant No. 2.

With the aforesaid modification the appeal stands disposed of No order as to costs.

