
(2011) 05 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.A. No. 53 of 2008

Brijlal Vanshkar and others	Vs	APPELLANT
Vijay Singh Tomar and others		RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2012) 1 RCR(Civil) 571

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Advocate : H.K. Goyal, for the Appellant; Lokendra Shrivastava, Advocate Respondent Nos. 1 and 2 and Ms. Vandana Kekre, Advocate Respondent No. 3/ Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—Appellants-claimants have come forward with this appeal u/s 173 of the Motor Vehicles Act 1988, in short "The Act" for enhancement of the sum awarded by the Motor Accidents Claims Tribunal, Datia in Claim Case No. 10/2007, vide award dated 28-9-2007, whereby their claim regarding vehicular death of Smt. Rajwati, the wife of appellant No. I and the mother of remaining appellants, in the alleged motor accident has been awarded against the respondents by saddling their joint and several liability to indemnify the sum of Rs. 1,91,000/- with interest @ 6% p.a. from the date of filing the claim petition to the appellants. The facts giving rise to this appeal in short are that the appellants herein filed the claim petition u/s 166 of the Motor Vehicles Act contending that Smt. Rajwati aged 28 years the wife of appellant No. 1 while the mother of remaining appellants died in the road accident happened on 21-11-2006, due to rash and negligent driving of the tractor bearing Registration No. M.P. 32 AA-0185 by respondent No. 1. As per further averments, the tractor was registered in the name of respondent No. 2 while the same was insured with respondent No. 3/insurance company. The deceased Rajwatibai besides looking

after the children and family affairs was also working as agricultural labour and was used to spend her income on the appellants and her family members. Due to untimely death of Rajwati, the appellants have deprived from her dependency while the appellants No. 2 to 4 also deprived from the love and affection of their mother. As per further averments, from aforesaid affairs and labour, the deceased was earning Rs. 3,000/- to Rs. 4,000/- per month. With these averments, the claim was filed for the compensation of Rs. 14,90,000/- along with interest @ of Rs. 10 percent per annum.

2. In reply of respondent No. 2 by denying the averments of the claim petition, in addition it is stated that the deceased being unemployed was not involved in any business as such she being a household lady was not the earning member of the family. The deceased sustained the alleged injuries on falling down her dilapidated house on her and she succumbed to such injuries. In order to get the sum of compensation the claim has been filed on false averments. In alternative, it is submitted that on holding any liability against the respondents No. 1 & 2, the same be saddled against the respondent No. 3/insurance company as the vehicle was duly insured with it.

3. In reply of the respondent No. 3/insurance company by denying the material facts of the claim petition in addition it is stated the appellants have filed the claim petition claiming the compensation on very higher side. At the time of accident such tractor was plying contrary to the purpose for which the same was insured, hence, due to such violation of terms and conditions of the insurance policy, no liability to indemnify the claim of the appellants could be saddled against it and the prayer for dismissal of the claim petition is made.

4. In view of the pleadings of the parties, after framing the issues and recording the evidence, on appreciation of the same, it was held that the deceased Rajwati had died in the alleged vehicular accident caused by respondent No. 1 while driving the aforesaid tractor in rash and negligent manner. In such premises, the claim of the appellants was awarded for the sum as stated above. Being aggrieved by the quantum of such compensation, the appellants have come forward with this appeal for further enhancement of the sum.

5. Mr. H.K. Goyal, learned counsel for the appellants after taking me through the pleadings, available evidence and the exhibited documents from the record of the Tribunal submitted that in the available circumstance by holding the deceased to be a labourer, the claim of the appellants ought to have been awarded taking into consideration the income of the deceased at the rate of Rs. 3,000/- per month. According to his submission, in the year 2006, in which the alleged accident had taken place, a non- skilled labourer was earning Rs. 100/- per day or more than this. He further submitted that in the case at hand keeping in view the other activities of the deceased as she was used to look after the catties of the family and in harvesting season was used to go into the fields of other to harvest the crops, her income could not be deemed less than Rs. 3,000/- per month. With these submissions, prayed for further enhancement in the sum awarded by the

Tribunal by allowing this appeal. He also placed his reliance on a decision in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and prayed for allowing the appeal.

6. The aforesaid prayer is opposed by Ms. Vandana Kekre, learned counsel for the respondent No. 3/insurance company by justifying the finding of quantum of sum awarded by the Tribunal. She submits that the sum awarded by the Tribunal is based on appropriate appreciation of evidence by the Tribunal and also in conformity with law. She further submits that in the available circumstances the awarded sum is just and proper and does not require any interference for further enhancement on any of the count. According to her, in the year 2006 the person like deceased Rajwati was not earning more than the notional income provided in schedule second enacted u/s 163-A of the Act and prayed for dismissal of this appeal.

7. Having heard the counsel for the parties, keeping in view their arguments, after perusing the record of the Tribunal along with impugned award, keeping in view the law laid down by the Apex Court in the matter of Sarla Verma's case (supra), on examining the case at hand, I have found that the sum awarded by the Tribunal is on the lower side, the same is required further enhancement at this stage.

8. In view of the unchallenged findings of the Tribunal holding the alleged accident and the death of Rajwati due to rash and negligent driving of the aforesaid offending tractor by the respondent No. 1 and saddling the joint and several liability indemnifying the awarded sum against the respondents No. 1 to 3 such approach of the Tribunal does not require any interference at this stage. As such the approach of the Tribunal is binding on all of the parties of the claim petition.

9. Coming to consider the question regarding income of the deceased no one can deny this fact that now a days the household lady has more productivity in her family. As the children, husband and elder persons of the family also looked after by her, for which nothing is paid or given to her but still on re-appreciation of evidence her productivity and devotion towards the family could not be ignored by the members of the society and even by the Court also. So in such premises, considering the productivity of the deceased towards the appellants her family members, the Court is bound to award the claim of the appellants for a reasonable sum and not at the lower side.

10. Apart from above, on going through the evidence led by the parties in the impugned claim, it is apparent that in the difficult days of her life for the welfare of her three children and husband she was also working as a labourer in the harvesting season at the field of others and was also looking after the catties of the family. It is a settled proposition of law that the Court is bound to award such claim also which is filed with respect of the death of unemployed person if he had some other type of productivity in him for the family.

11. To prove the productivity and income of the deceased her husband appellant No. 1 Brijlal (PW-1) has deposed that besides to look after the children and family affairs the deceased was also working as a agriculture labourer from which she was earning Rs. 2,000/- per month. His version is further supported by Bhadshah (PW-2), who also stated the same thing as stated by the appellant No. 1. Such evidence was remained unrebutted as in rebuttal of the same none has been examined on behalf of any of the respondents. So taking into consideration the unrebutted evidence of the appellants, it is held that the deceased was earning Rs. 2,000/- per month in cash as labourer besides to look after the children, family affairs and catties of the family. In any case for looking after the appellants No. 2 to 4 in their minority if any attendant is kept then such attendant will not be available unless Rs. 2,000/- or Rs. 3,000/- per month is paid to him.

12. In the above mentioned overall circumstances of the case, I deem it fit to take deemed monthly income of the deceased at the rate of Rs. 3,000/-per month and the same is taken into consideration for assessing the total dependency of the appellants on the deceased. On taking such income of the deceased then her annual income comes to $\text{Rs. } 3000 \times 12 = 36,000/-$, out of which in view of the Sarla Verma's case (supra)) 1/4th amount is deducted regarding expenses of the deceased which she would have spent on her had she been alived then the annual dependency comes to $\text{Rs. } 36,000 - 9,000 = 27,000/-$. In view of 28 years age of the deceased held by the Tribunal, according to the case of Sarla Verma's (supra) the multiplier of 17 is applicable to the present case. On adopting the same, the total dependency comes to $\text{Rs. } 27,000 \times 17 = 4,59,000/-$, besides this the appellants are also entitled for Rs. 20,000/- on the traditional heads namely funeral expenses, expectancy of life, loss of estate, and also the appellant No. 1 for depriving the company of his wife for ever in has remaining life. The same are awarded. In view of the aforesaid, by allowing this appeal in part the sum of Rs. 1,91,000/- awarded by the Tribunal is enhanced from such sum up to Rs. 4,79,000/- as discussed above. The enhanced sum shall also carry interest @ of Rs. 6 percent per annum from the date of filing of this appeal. The liability to pay the enhanced amount is saddled jointly and severally on the respondents No. 1 to 3 as already held by the Tribunal. Till this extent, the impugned award of the Tribunal is hereby modified while remaining findings of the same are hereby affirmed. In the available circumstances, there shall be no order as to costs. Accordingly, this appeal is allowed in part as indicated above.